PIY 7-02 (3)

PERMANENT COURT OF INTERNATIONAL JUSTIC

The report does not mention the history of the finances of the Court of Arbitration; surely that history offers no support for the smade.

Chapter XI on "Regional Chambers" contains a useful discussion out offering any definite proposal. The Committee conceived of it as being "entirely new ground," but this fails to take account of the suggest made by M. Buero (Uruguay) at the Eighth International Conference American States in 1938, and of similar suggestions made elsewhere.

Chapter XII gives a useful summary of the recommendations and conclusions.

The report as a whole is a document of outstanding importance, useful for the problems of the future as well as for those of the present discussions. In its form and in its spirit, it leaves little to be desired. If a stricter analysis of actual experience might have increased its value, and if some of the suggestions may some to have been cut out of whole cloth in neglect of the history, the report is nevertheless a significant contribution which no study of these problems can afford to ignore. The authors deserve the thanks of a grateful profession.

THE INTERNATIONAL LABOR ORGANIZATION AND THE COURT

The Governing Body of the International Labor Office has recently taken an active interest in the problem of the future of the Court and has sought to safeguard the favorable position of the International Labor Office under existing "arrangements," particularly with respect to its access to the Court and to the special position given to it by Article 26 of the Statute. On April 13, 1944, the Acting Director of the Office informed Governments of the views of the Governing Body, stating that 6

experience has demonstrated that these arrangements have been of great practical value in facilitating the exercise by the Court of the jurisdiction entrusted to it by the Constitution of the International Labour Organisation and making possible for the Court to play a major rôle in the development of the constitutional law of the Organisation with the full confidence and support of all elements in the Organisation.

At the same time the Governing Body suggested that consideration be given to the possibility of according to the Organization the privilege of making direct requests for advisory opinions. The reasons for the suggestion are readily understandable, though it may be questioned whether the Organization has been placed at any serious disadvantage in the past because of the necessity of making its requests through the Council or Assembly of the League of Nations. In no instance did the Council decline to make a request desired by the Governing Body.

⁵ Octava Conferencia Internacional Americana, Diario de Sessiones, Lima, 1939, p. 272.

⁶E.g., in 222 Annals of the American Academy of Political and Social Science (1942), p. 123.

⁵a International Labor Office, Official Bulletin, Vol. XXVI, p. 194.

adum attached to the communication of April 13, 1944, raises questions of challenging interest. It properly stresses the need of occdure whereby a municipal court called upon to give a decision olving the interpretation of an international labour Convention old submit the international questions at issue for decision to the fermanent Court or any new court which may be established, the International Labour Office and the parties to the Convention being entitled to participate in the proceedings in accordance with established practice.

It also proposes that a court "be empowered to assume jurisdiction of any dispute between two or more" public international organizations "which the parties thereto may refer to it or in respect of which it may be granted jurisdiction by treaties or Conventions binding on the organizations concerned." This would represent an extension for which some need or justification might be sought; but the memorandum supplies no practical argument in this connection other than a forecast that in the future such organizations are "likely to enter into agreements with each other analogous to treaties between States." It is also proposed that, by analogy to the intervention provided for in Article 62 and 63 of the existing Statute, provision should be made "permitting the participation in proceedings" of "a public international organization having an interest of a legal nature in matters arising for decisions." This seems to be based upon an assumption that such an organization may have "rights or obligations" under an international instrument.

THE DUMBARTON OAKS PROPOSALS

The most important development of the year came out of the consideration of court problems in the exploratory conversations conducted at Dumbarton Oaks from August 21 to October 7, 1944, with the participation of American, British, Chinese, and Soviet representatives. In a sense court problems were relegated in these conversations to the category of unfinished business. Yet the "tentative proposals" which emerged contain certain indications which are pregnant for the future.

In Chapter IV of the Proposals an "international court of justice" is listed among the "principal organs" envisaged for a general international organization. In Chapter V, Section B, paragraph 4, it is provided that the proposed General Assembly "should perform such functions in relation to the election of judges of the international court of justice as may be conferred on it by the Statute of the court." Chapter VII, entirely devoted to "An International Court of Justice," contains the following provisions:

1. There should be an international court of justice which should constitute the principal judicial organ of the Organization.

2. The court should be constituted and should function in accordance with a statute which should be annexed to and be a part of the Charter of the Organization.

3. The statute of the court of international justice should be either (a) the Statute of the Permanent Court of International Justice, con-

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tinued in force with such modifications as may be desirable or! statute in the preparation of which the Statute of the Permane of International Justice should be used as a basis.

4. All members of the Organization should ipso facto be parties?

statute of the international court of justice.

5. Conditions under which states not members of the Organizat may become parties to the statute of the international court of just? should be determined in each case by the General Assembly upo recommendation of the Security Council.

Chapter VIII, Section A, paragraph 6, provides: "Justiciable disputes should normally be referred to the international court of justice. The Security Council should be empowered to refer to the court, for advice, legal questions connected with other disputes." It is added in paragraph 7, however, that "the provisions of paragraph 1 to 6 of Section A should not apply to situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned." Chapter VIII, Section C, paragraph 1, provides that "the Security Council should encourage settlement of local disputes" through regional arrangements or by "regional agencies."

The proposals thus raise a number of questions and give some indications with reference to them, in advance of the future consideration of the whole problem which is contemplated. The following seem to be among the questions which emerge from Dumbarton Oaks:

1. Should "the statute of the court of international justice" be "(a) the Statute of the Permanent Court of International Justice, continued in force with such modifications as may be desirable, or (b) a new statute in the preparation of which the Statute of the Permanent Court of International Justice should be used as a basis"? (Chapter VII, paragraph 3.)

2. If the first of these alternatives should be preferred, what "modifi-

cations" in the existing Statute "may be desirable"?

(a) As to election of judges? In Chapter V, B, 4, it is contemplated that some "functions in relation to the election of judges" may be conferred on the General Assembly.

(b) As to payment of expenses? Chapter V, B, 5 refers gener-

ally to "the expenses" of the Organization.

(c) As to advisory opinions? Chapter VIII, A, 6 would empower the Security Council "to refer to the court, for advice, legal questions" connected with certain disputes. Should the General Assembly, and possibly other bodies, have a similar power?

(d) As to Chambers of the Court? Should the possibility of

regional chambers be envisaged? Cf., Chapter VIII, C, 1.

(e) As to amendment of the Statute? Chapter XI refers generally to amendments to the Charter; should a different procedure be prescribed for amending the Statute?

(f) What modifications are "desirable," generally?

3. If a "new statute" should be preferred, what special features of the existing Statute should be preserved? And what new features should be included? Should access to the court be open to all states?

What would be the legal effect of having the statute of the court nexed to" and made "a part of the Charter of the Organization" hapter VII, 2)? Is an independent statute to be preferred? Would be an advantage that "all members of the Organization should ipso facto be parties to the statute" of a court (Chapter VII, 4)?

5. What should be the position of a state expelled from membership

or suspended?

6. If it should be decided to preserve the existing Statute, should all states now parties to that Statute be permitted to continue as parties, even though they do not become members of the Organization (Chapter VII, 2)? Should conditions of such continuance be "determined in each case" by the General Assembly on the recommendation of the Security Council (Chapter VII, 5)?

7. What is the significance of the provision (Chapter VII, 1) that the court should "constitute the principal judicial organ of the Organization"? Are other judicial bodies to be contemplated at this time? Are

regional tribunals to be contemplated (Cf. Chapter VIII, C, 1)?

8. Should a definition of "justiciable disputes" be given (Chapter

VIII, A, 6)?

9. Should some measure of compulsory jurisdiction over justiciable disputes be conferred on the court by the Charter? by the Statute?

(a) If the Security Council decides that their continuance "is likely to endanger the maintenance of international peace and security" (Chapter VIII, A, 3 and 6)?

(b) If the Security Council decides that their continuance is not "likely to endanger the maintenance of international peace and

security" (Chapter VIII, A, 6)?

10. Should the Security Council be empowered to deal with a dispute the continuance of which "is likely to endanger the maintenance of international peace and security," even though the dispute is pending before the court (Chapter VIII, A, 5)?

11. Should the court be given any rôle in determining "the existence" of an alleged "breach of the peace or act of aggression" (Chapter VIII,

B, 2)? May this be a "justiciable" matter?

12. Should the provisions concerning justiciable disputes (Chapter VIII, A, 1-6) not apply to "disputes arising out of matters which by international law are solely within the domestic jurisdiction of the State concerned" (Chapter VIII, A, 7)? Who is to determine whether a dispute arises out of such a matter? Are some disputes of a mixed character?

13. Should any provision be made which would look toward the

possible enforcement of court judgments?

14. Should the court be given any rôle with reference to the interpretation of provisions in the Charter of the new Organization?

SUGGESTIONS FROM NON-OFFICIAL SOURCES

In non-official circles active interest is being manifested in the general problem of a future court, and particularly in the future of the Permanent Court of International Justice.

Meeting in the City of Mexico in August, 1944, the Inter-American Bar Association resolved That the general international organization include the exis Permanent Court of International Justice, with the necessary adaption of its Statute to the new organization, and the Court should a empowered to create chambers, special or regional, as need arises; and

That the Assembly have power to create from time to time such

inferior courts as may be necessary.

It further resolved "that the endeavor be made to have the following proposals put into practice:"

That the Permanent Court of International Justice must continue to exist, linked to whatever political agency be set up after the war. It would have compulsory jurisdiction over all juridical disputes between States, in matters relating to their respective rights. Said jurisdiction would be exercised at the request of any State a party to the dispute. However, should the parties involved in the controversy agree to resort to some other procedure for peaceful settlement, the Court would have no jurisdiction until after such procedure had been exhausted without reaching a settlement of the conflict.

When drafting the statute of the Court its jurisdiction would be

broadened as much as possible.

The American Bar Association, meeting at Chicago in September, 1944, and acting through its House of Delegates, adopted the following

resolution: 7

That, in the opinion of the American Bar Association, the extension and firm establishment of the scope and authority of impartial adjudication under law are essential for forestalling and preventing causes of war. The American Bar Association urges that, at the earliest practicable time, as one of the vital steps in an adequate postwar organization of the Nations for peace and law, the Permanent Court of International Justice shall be continued and its jurisdiction and powers broadened, as the highest tribunal in the international judicial organization. The American Bar Association respectfully offers at this time the following for consideration:

(a) That the international judiciary be so organized that it will be reasonably accessible to litigant Nations and Nationals; that hearings be held at such places and times as will not involve too great expense and traveling time to litigants; and that the international judiciary should be an integral part of the general international organization.

(b) That through amendment of the Statute of the Court or other agreement of the Nations, the jurisdiction and powers of the Permanent Court of International Justice should be enlarged and broadened, with defined obligatory jurisdiction; and that the procedure for amending the Statute of the Court to adapt it to expand-

ing needs and changing conditions should be simplified.

An additional resolution was also adopted as follows: 8

I. That the Permanent Court of International Justice, organized in 1922 at The Hague and known as the World Court, should be continued as the highest tribunal of an accessible system of interrelated permanent international courts with obligatory jurisdictions.

¹ 30 American Bar Association Journal (1944), p. 546.

^{*} Same, p. 547.

II. That the World Court be so organized that a member shall be available to sit as an International Circuit Court, with original jurisdiction, to hold regular terms in the Capital of each member nation of the International Judicial System. In addition to the World Court Justice on Circuit, each such Circuit Court shall include one or more International Commissioners assigned to sit in an advisory capacity.

III. That an International Judicial Conference composed of jurists should be convened at the earliest practicable moment with a view to concluding an "International Judiciary Agreement" based on the Statute of the World Court, with such amendments as may be necessary to give effect to the foregoing resolutions and to provide for the prompt organization and maintenance of the "International Judicial System."

Numerous individuals have made suggestions, also. If some of them serve no useful purpose, others are serious and by the measure of the views expressed they will doubtless receive the attention which they merit. In some cases drafts of statutory provisions have been put forth: a draft by Charles L. Nordon odoes not challenge interest, but a draft by Hans Kelsen to raises such fundamental problems that, although it is entirely outside the current of present thinking, it should by no means be ignored. A paper by Jan Hostie to clearly merits careful study, and an attempt to survey the history of one hundred and fifty years of international adjudication, made in a small volume on "International Tribunals, Past and Future," recently published by the Brookings Institution and the Carnegie Endowment for International Peace, may offer some materials for an approach based on past experience.

As the effort to create a new general international organization has already been launched, a crucial moment may have arrived in the long history of the movement for a permanent international court. To many the chief problem seems to be that of preserving the great gains which have come from fifty years of intelligent, persistent, and continuous effort. Some further progress may well be desired, but its urgency is greatly minimized by the possibility that existing gains may be lost or that backward measures may be adopted.

The primary need of the world is for a court endowed with the prestige which will enable it to serve for the adjudication of disputes between states according to law. Such a court exists under the Statute of 1920. It is not an hypothesis, it is a fact. It is not perfect, it might be improved in this or that detail, and a larger rôle could be carved out for it. Yet effort along these lines should be subordinated to the over-powering necessity of placing the Court which exists in a position to resume its activity and to carry on its functions under the hundreds of international instruments which are now in force and to which additions may be made as states are willing to make them.

⁹⁴ Law Journal (1944), pp. 341-2. See also H. A. Munro in same, pp. 251-253.

¹⁰ Kelsen, Peace Through Law, Chapel Hill, 1944, pp. 127-48.

¹¹ This Journal, Vol. 38 (1944), pp. 407-33.

¹² Manley O. Hudson, International Tribunals, Past and Future, Washington, 1944.

ACQUISITION OF NATIONALITY IN THE EMERGENCY REFUGER SHELTER

By Albert G. D. Levy Washington, D. C.

Several families now living in the Emergency Refugee Shelter which the United States Government has established at Fort Ontario, in the state of New York, are expecting the birth of children in the near future. Will these children acquire American citizenship jure soli? Does the non-immigrant status of the parents derogate from the privilege of the children? And most important among the numerous questions involved, Does the so-called "refugee free port" constitute the requisite type of American territory?

The first section of the Fourteenth Amendment to the Constitution contains the rule of jus soli and provides that

All persons . . . born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

Similarly, the Nationality Act of 1940, in Section 201, specifies:

The following shall be nationals and citizens of the United States at birth:

(a) A person born in the United States, and subject to the jurisdiction thereof.

To acquire citizenship jure soli in the United States a person must thus satisfy two requirements: he must be born "in the United States" and "subject to the jurisdiction thereof." ²

The alien status of their parents would not seem to prejudice the ready acquisition of American nationality and citizenship by these children. The

¹ 54 Stat. 1138.

² Cf. Francis V. Lowden, Jr., "The Nationality Act of 1940," Virginia Law Review, Vol. 27 (1941), p. 531.

** United States v. Wong Kim Ark (1898), 169 U. S. 649; cf. In re Look Tin Sing (C. C. Cal. 1884), 21 Fed. 905, 906. "That children born in the United States to domiciled aliens should be citizens seemed clear, and in United States v. Wong Kim Ark the Supreme Court held that such children were citizens even though their parents were incapable of naturalization and were forbidden to change their allegiance by the law of their own country. And it seems safe to say that the same rule would be applied to children born to aliens temporarily within the country, no matter how short their stay." "Citizenship by Birth," Harvard Law Review, Vol. 41 (1928), p. 643, at p. 644, and notes 7-9.

The refugees at Fort Ontario hail from fourteen different countries. The New York Times, August 5, 1944, p. 13. Most of the sixty-one families of German origin can probably be considered expatriated by the Reich. Robert M. W. Kempner, "The Enemy Alien Problem in the Present War," this JOURNAL, Vol. 34 (1940), p. 443; and "Who is Expatriated by

Esent residence of the parents is not located on any type of "constructive erritory," but on terra firma which normally, and within the accepted jural flefinition, would be attributed to the "territorial jurisdiction" of the United States. Does Fort Ontario, as an Emergency Refugee Shelter, constitute a different kind of "territory" under international law? Here we must first examine the wording of the documents which provided for the establishment of the Shelter, noting, however, their character of unilateral declarations (and implementation) of a relatively novel and far-reaching type of humanitarian intervention in time of war.

On June 9, 1944, the White House released to the press the text of a cable-gram which had been sent by President Roosevelt to Ambassador Robert Murphy in Algiers and which directed the removal of certain European refugees to the United States. The cablegram began by speaking of the need for transporting some of the numerous refugees in southern Italy to other

Hitler: An Evidence Problem in Administrative Law," University of Penna. Law Review, Vol. 90 (1942), p. 824; Alfred Kauffmann, "Denationalization and Expropriation: The German Law depriving Jewish Emigrants of Nationality, and Property, and Effects," Law Journal (London), Vol. 92 (1942), p. 93. Also Ernst Fraenkel, The Dual State (New York, 1941), p. 87; Franz Neumann, Behemoth, New York, 1942, pp. 113-114. But this does not hold true for nationals of several of the countries now being liberated from Axis occupation. Finally there are some stateless individuals whose status either antedates the present conflict and its more immediate preliminaries, or is "genuine" due to the accident of birth, or both. This question of the parents' allegiance will be of importance in cases where dual nationality might ensue and where the children must make a choice upon attaining their majority.

⁴ Cf. In re Lam Mow (1927), 19 F. (2d) 951, affirmed in Lam Mow v. Nagle (1928), 24 F. (2d) 316. Under the Nationality Act of 1940, births aboard American vessels on the high seas appear to have been left to judicial boundary-making. The decisions in the Lam Mow cases denied citizenship for such an occurrence, but the British doctrine, both by common law and by statute, reaches exactly the opposite result. Marshall v. Murgatroyd (1870), L. R. 6 Q. B. 31; Nationality and Status of Aliens Act, 1914, 4 & 5 Geo. V, c. 17, par. 1 (i) (c). Births during a non-stop air journey over the United States would probably be treated like births aboard (foreign and United States) merchant vessels in territorial waters of the United States. Cf. 3 Hackworth, Digest, pp. 10-12; "The Nationality Act of 1940," Harvard Law Review, Vol. 54 (1941), notes 10-12; Philip C. Jessup, "Revising our Nationality Laws," this Journal, Vol. 28 (1934), p. 104, at p. 108; Charles Chency Hyde, "The Nationality Act of 1940," same, Vol. 35 (1941), p. 314, at p. 315.

The rules governing the nature and extent of humanitarian intervention are firmly rooted in classical international law. Cf., e.g., Grotius, De J. B. ac P., 2, XX, 38; also 1, III, 9; 2, XX, 5. Wolff, J.G.M.S.P., II, 258; V, 652; VI, 646. Vattel, Le Dr. d. G., 2, IV, 58-56. The unilateral character of the American undertaking for the protection of these refugees.

The unilateral character of the American undertaking for the protection of these refugees derives from the exercise of sovereignty: "A state is under no duty, in the absence of treaty obligations, to admit aliens to its territory. If it does admit them, it may do so on such terms and conditions as may be deemed by it to be consonant with its national interests. Likewise a state may deport from its territory aliens whose presence therein may be regarded by it as undesirable. These are incidents of sovereignty." 3 Hackworth, Digest, p. 717. Nevertheless the project is fully consonant with the policies and proclaimed war aims of the United Nations as a whole. Space does not permit a discussion of the position of "refugee shelters" in the Mediterranean area and the Middle East.

areas in order to afford additional oppressed people a refuge who could come on routes leading through Yugoslavia. Relocation adjacent to the Mediterranean was recognized as most expedient.

At the same time I feel [the President continued] that it is imit that the United States indicate that it is ready to share the burd caring for refugees during the war. Accordingly, I have decided approximately 1,000 refugees should be immediately brought from 1 to this country, to be placed in an Emergency Refugee Shelter to be est · lished at Fort Ontario near Oswego, New York, where under appropria security restrictions they will remain for the duration of the war. refugees will be brought into this country outside of the regular immigration procedure just as civilian internees from Latin American countries and prisoners of war have been brought here. The Emergency Refugee Shelter will be well equipped to take good care of these people. It is contemplated that at the end of the war they will be returned to their homelands.6

Subsequent paragraphs provided for cooperation with the representatives of the War Refugee Board⁷ in Algiers as regards the general arrangement of the scheme and with American military and naval authorities as regards the transportation of the persons selected. In conclusion some suggestions were added concerning the principles which should govern the choice of the refugees.

A memorandum sent by the President on June 8 to the Secretaries of War. the Navy, and Interior, the Director of the Budget, and the Executive Director of the War Refugee Board, implemented the above plan and read in part as follows:

(1) The War Department and the Navy Department shall send whatever instructions are necessary to the military authorities in Italy and North Africa to expedite the transportation of these refugees to the United States.

(2) The War Department shall arrange to furnish and properly equip Fort Ontario to receive these refugees; shall arrange for their transportation from the port of arrival to the camp; and shall arrange for necessary security precautions.

(3) The War Relocation Authority shall make arrangements to handle the actual administration of the camp, which will be designated

as an Emergency Refugee Shelter.

(4) Until UNRRA is in a position to assume the financial responsibilities involved, the Bureau of the Budget shall make arrangements for financing the project, using to the extent possible any available funds of the War Department, the War Relocation Authority, and the War

Department of State Bulletin, Vol. 10 (1944), p. 532.

⁷ Same, Vol. 10 (1944), p. 95. The War Refugee Board was set up by the President on January 22, 1944, composed of the Secretaries of State, Treasury, and War, and designed "to take action for the immediate rescue from the Nazis of as many as possible of the persecuted minorities of Europe-racial, religious, or political-all civilian victims of enemy savagery"; Executive Order 9417; 9 Federal Register 935.

Refugee Board, and from the Foreign War Relief appropriation, and if necessary drawing upon the President's Emergency Fund.8

Finally, under the date of June 12, 1944, President Roosevelt advised the Congress in a special message that

... arrangements have been made to bring immediately to this country approximately 1,000 refugees who have fled from their homelands to southern Italy. Upon the termination of the war they will be sent back to their homelands. These refugees are predominantly women and children. They will be placed on their arrival in a vacant Army camp on the Atlantic Coast where they will remain under appropriate security restrictions.

The Army will take the necessary security precautions and the camp will be administered by the War Relocation Authority. The War Refugee Board is charged with over-all responsibility for this project.

According to newspaper reports 984 men, women, and children who had been selected from the 36,000 refugees then in Allied camps in Italy arrived in the United States on August 3 and were taken to Oswego.¹⁰ The place of residence of these refugees, by virtue of the official documents quoted earlier, is termed "Emergency Refugee Shelter." Fort Ontario, near Oswego, New York, as a locality, forms part of the United States. It has been described, inter alia, as "a vacant Army camp on the Atlantic Coast" and presumably belonged, while used by our armed forces, to a domestic command. No mention has been made at any time that the sovereignty of the United States is in any way diminished at Fort Ontario while it serves as a haven for refugees. On the contrary, the very discretion which has been exercised in the form of the admission of these people into the United States, and in the arrangement of security precautions at the camp, shows that all modifications in the nature of their sojourn are of purely municipal concern. In his cablegram to Mr. Murphy as well as the directive to the departments and the messages to the Congress the President employed the phrases "into this country" and "to this country" when speaking of the transfer of the refugees. The individuals involved cannot benefit from the regular immigration procedure. But the very mention of the (temporary) "admittance" of the refugees "outside of the regular immigration procedure" serves to support the preceding three words, "into this country" as they first appeared in the President's cablegram to Mr. Murphy.

All of this would tend to show that the Emergency Refugee Shelter at Fort Ontario is United States territory in general and in respect to its new occupants and for the purpose of determining the nationality of children born there. Circumstantial evidence may be added: The Army of the United States provides only for "security precautions"; the camp is not under the

⁹ Same, Vol. 10 (1944), pp. 553, 554.
¹⁰ The New York Times, August 5, 1944, p. 13.

⁸ Same, Vol. 10 (1944), p. 533. The War Relocation Authority was created originally within the Office for Emergency Management by Executive Order 9102, of March 18, 1942.

ACQUISITION OF NATIONALITY IN THE EMERGENCY REFUGA

jurisdiction of a "military government." The shelter as such tered by the War Relocation Authority, an essentially domestic. And even if UNRRA were to participate in the financing of the precontributions from its own funds, recent developments in France, Italy, Yugoslavia have made it abundantly clear that this international age functions in coöperation with, and through, the established authorities at the place of actual operations, and without alienating any portion of their sovereign power. The analogy to "civilian internees from Latin American countries and prisoners of war" may seem somewhat too hasty and allinclusive to the international lawyer, but it remains in any event without material consequences for the case at hand.

There are some popular confusions, however, which should be eliminated at this point. Both while the project of the Shelter was still in the discussion stage ¹² and after its realization, ¹³ numerous comments referred to it as a "refugee free port." What is a free port? According to the official American view.

A free zone may be defined as an isolated, inclosed, and policed area, in or adjacent to a port of entry, without resident population, furnished with the necessary facilities for lading and unlading, for supplying fuel and ship's stores, for storing goods and for reshipping them by land and water; an area within which goods may be landed, stored, mixed, blended, repacked, manufactured, and reshipped without payment of duties and without the intervention of customs officials. It is subject equally with adjacent regions to all the laws relating to public health, vessel inspection, postal service, labor conditions, immigration, and indeed everything except the customs. 14

This agrees with foreign usage. ¹⁵ Free ports for humans do not exist in the law, and suspension of immigration procedures for admission to a certain part of the country neither makes that section a "free port" for this and other purposes nor does it decrease the admitting state's sovereign position therein, under international law, if nothing else accompanies the action. Like a "free port," the establishment of the Emergency Refugee Shelter constitutes a unilateral voluntary obligation undertaken by the United States. But the unguarded employment of popular terms to describe the latter project must inevitably result in confusion.

 $^{^{11}}$ E.g., there is no basis for comparison to births in the army of a foreign sovereign, and even the latter conception has usually been applied only to invading forces. Cf. "Citizenship by Birth," as cited, note 3.

¹² The Chicago Sun, May 14, 1944, p. 18.

¹³ Aufbau (Reconstruction), Oct. 13, 1944, p. 3.

¹⁴ United States Tariff Commission, Free Zones in Ports of the United States, Washington, 1918, p. 9. Italies supplied.

¹⁵ See the Law Providing for a Commission to Select a Site for the Free Port in Lisbon, Portugal, of June 13, 1913, which specified in Section 14 "That the undertaking, for all legal purposes, must be considered Portuguese and subject only to the jurisdiction of the Portuguese courts. . . ." Reprinted in translation in same, p. 86.

Fort Ontario, as an Emergency Refugee Shelter, might be assimilated to he territory of Ellis Island. But some writers believe that children cannot acquire citizenship (jure soli) if born at Ellis Island to alien parents who are awaiting admission to the United States or have been admitted under bond while awaiting deportation. 16 They appear to be guided by the ruling of the Supreme Court that such aliens are, in legal contemplation, "still at the frontier"—an assumption which has been used in another connection.¹⁷ The Nationality Act of 1940 is silent on this point. The President made repeated use, however, of the phrase "into this country" and other reasons have been adduced why births at the Shelter should be considered to have taken place "within the country." Hackworth states that "The circumstance of birth within the United States makes one a citizen thereof even if his parents were at the time aliens, provided they were not by reason of diplomatic character, or otherwise, exempted from the operation of its laws." 18 He then quotes the following memorandum of the Office of the Solicitor of the Department of State, dated February 6, 1930, as indicating the law on the subject:

The only possible ground for holding that Ona Laszas [born at Ellis Island was not born a citizen of the United States, under the provision of the Fourteenth Amendment to the Constitution, is that her alien mother was never admitted into the United States under the immigration laws, that is, never admitted as an immigrant. It is clear, however, that when the child was born, the mother was physically present on territory of the United States, so that the child was born in the United States. It only remains to be determined whether the child was born "subject to the jurisdiction thereof," within the meaning of the Fourteenth Amendment. The meaning of this phrase was considered by the Supreme Court of the United States in U.S. v. Wong Kim Ark, 169 U.S. 674. . . . In rendering the opinion of the court in this case, Mr. Justice Gray explained the meaning of the phrase, "subject to the jurisdiction thereof" by saying in effect that its object was to except from the general rule cases of children born in the United States to alien parents who were at the time immune from the jurisdiction of the United States. . . .

It does not appear that the mother of Ona Laszas belonged to any one of the classes of aliens referred to by Mr. Justice Gray as enjoying immunity from the jurisdiction of the United States. . . . If she had committed a murder or any other criminal offense while she was on the island, there seems to be no question but that she would have been subject to prosecution and punishment under the laws of this country.

^{16 &}quot;The Nationality Act of 1940," Harvard Law Review, Vol. 54 (1941), as cited.

¹⁷ Nishimura Ekin v. United States, 1892, 142 U. S. 651, 661; United States v. Ju Toy, 1905, 198 U. S. 253, 263; Kaplan v. Tod, 1935, 267 U. S. 228, 230. But these decisions, and the consequences to which they could give rise, have not gone unchallenged. Indeed it has been suggested that citizenship should not be refused to a child born to parents who have entered the country illegally. "Citizenship by Birth," p. 645.

¹⁸ 3 Hackworth, *Digest*, pp. 9-10. The aliens here do not possess diplomatic character and our arguments purport to show that they were not otherwise exempted from the operation of the laws in general.

ACQUISITION OF NATIONALITY IN THE EMERGENCY REFUGEE SHELTER

In other words, while she was on the island, she owed the same "temporary allegiance" which is required of aliens generally while they are in this country.¹⁹

Thus even if the Shelter should be likened to Ellis Island (as regards the territorial jurisdiction of the United States) children born to refugees at Fort Ontario must be deemed American citizens.

The present problem can not be evaded under existing circumstances, although its solution would be simplified if these (or future) children of the refugees were to be born in a hospital outside the limits of the Shelter.²⁰ Whether parents of children who are American citizens jure soli (and who, in the event of dual nationality, prefer and retain American citizenship also after reaching their majority) should or should not "be sent back to their homelands" after the war, remains to be decided by the authorities charged with implementing the President's pronouncements, respectively recommending the issuance of additional directives. Here problems of expediency, precedent-formation,²¹ and relief of hardships are likely to arise. The children cannot be deported, however, unless they renounce their American citizenship or are deprived thereof as otherwise specified in our laws.

19 Same, p. 10, quoting MS. Department of State, file 130 Laszas, Ona.

²⁰ Note, however, the exterritoriality established for the hospital suite of Crown Princess Juliana by a Canadian Government proclamation of January 2, 1943, in order to insure Netherlands nationality for the expected child. *The New York Times*, January 3, 1943, p. 44. This precaution was taken because the Crown Princess was not a ruling sovereign.

²¹ Some refugees at Fort Ontario are understood to have children or near blood-relatives who are serving in the armed forces of the United States or who are civilians (born American citizens or) naturalized according to the regular procedure.

POSTWAR INTERNATIONAL ORGANIZATION AND THE WORK OF THE SECTION OF INTERNATIONAL AND COMPARATIVE LAW OF THE AMERICAN BAR ASSOCIATION

By MITCHELL B. CARROLL Chairman of the Section

The Dumbarton Oaks proposals of October 7, 1944, reflect a development of ideas concerning international political and judicial organization in which the Section of International and Comparative Law of the American Bar Association has played a significant part. Its recommendations calling for the establishment of an international organization, including an improved system for settling justiciable disputes, have found their way into resolutions of the Association, composed of some thirty thousand lawyers. These resolutions preceded the joint projects of the United States, the United Kingdom, the Soviet Union and China for an international organization for the maintenance of peace and security.

As early as August 27, 1942, the House of Delegates of the Association, on the motion of the Section, affirmed "its devotion to and its faith in the existence, permanency, and validity of international law and the law of nations as the fundamental basis for regulating international relations."

Again on March 30, 1943, the Association endorsed, "as one of the primary war and peace objectives of the United Nations, agreement among such nations for the complete establishment and maintenance at the earliest possible moment of an effective international order among all nations based on law and the orderly administration of justice."

On September 21, 1943, the House of Representatives of the United States adopted the Fulbright resolution expressing itself as "favoring the creation of appropriate international machinery with power adequate to establish and to maintain a just and lasting peace among the nations of the world," and as "favoring participation by the United States therein through its constitutional processes."

Finally, on November 5, 1943, the United States Senate resolved:

That the United States, acting through its constitutional processes, join with free and sovereign nations in establishment and maintenance of international authority with power to prevent aggression and to preserve the peace of the world.

That the Senate recognize the necessity of there being established at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.

In view of the foregoing, on February 29, 1944, the American Bar Association reaffirmed its adherence to the principles set forth in its resolutions of August 27, 1942, and March 30, 1943, recorded its hearty support of the resolutions of the House of Representatives and the Senate of the United States, and urged all members of the American Bar Association to avail themselves of every opportunity to cooperate with the legislative and executive branches of our Government in measures for the prompt and effective implementation of these resolutions.

Moreover, at the meeting of the House of Delegates on February 29, 1944, additional resolutions of the Section, which had been formulated by its Committee on Constitutional Principles for a World Order, the chairman of which is Frederic R. Coudert, Sr., were presented and referred to a broadly constituted committee of the Association on Organization of the Nations for Peace and Law, the chairman of which is a former president of the Association, Judge William L. Ransom.

ESSENTIAL PRINCIPLES FOR AN INTERNATIONAL ORGANIZATION

A brief review of the Section's committee report and resolutions is timely because of the extent to which they anticipated some of the proposals adopted at Dumbarton Oaks.

The Committee's report stated that the special function of members of the Bar must be to strive for the rule of law and the peaceful settlement and adjustment of international disputes, so that war as an instrument of policy may be outlawed and aggression restrained. The report stresses the need for the community of nations to provide force to make international law The responsibility of accomplishing this objective must devolve effective. primarily on the nations with predominant power; nevertheless, the first principle of international law must be the equality of all nations before the Hence, the report suggests, the nations charged with the primary obligation of maintaining security should be represented on a council while all nations should enjoy equal representation in an assembly. The division of specific functions between the two bodies must necessarily be left to the interested governments. The report also stresses the thought that there must be some organ capable of dealing with necessary changes in treaties and in rules of international law which, like municipal law, must be kept abreast of changing conditions. The organization of justice is held to be of maximum importance to the Bar and this involves not only maintaining the Permanent Court of International Justice but also giving it compulsory jurisdiction over all justiciable questions, as defined in the Statute of the Court.

The foregoing concepts were embodied in the following suggested resolutions:

H

RESOLVED, That a permanent organization of the nations be established for the purpose of maintaining peace by legal sanctions and

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the suppression of aggressive war; and that such organization be empowered to consider and recommend to the nations changes in international treaties or other public relationships which may make for the maintenance of peace.

III

RESOLVED, That the states of the community of nations should before the law of nations enjoy equal rights and equal representation in the general assembly, and that any threat of force against any state is a matter of concern to the community of nations, any aggressive warfare a violation of the law of nations.

ΙV

RESOLVED, That the permanent organization should include a Council, membership in which will be based primarily on the capacity of atates to contribute to the maintenance of peace.

\mathbf{v}

RESOLVED, That the permanent organization include the Permanent Court of International Justice, and an adequate judicial system of which that Court shall be the Court of last resort.

VI

RESOLVED, That the United States of America should become a member of such organization and share full responsibility for its activities within the powers conferred and the limitations fixed by its own constitution.

These ideas were restated and amplified in the resolutions proposed by the Committee on Organization of the Nations for Peace and Law which were adopted by the Association at its annual meeting in Chicago on September 12, 1944.

Turning to the Proposals for the Establishment of a General International Organization drafted at Dumbarton Oaks, we find that their first purpose is "To maintain international peace and security; and to that end to take effective collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of peace, and to bring about by peaceful means adjustment or settlement of international disputes which may lead to a breach of the peace."

All members of the organization are to be members of a General Assembly which, *inter alia*, "should have the right to consider the general principles of coöperation in the maintenance of international peace and security," and "to discuss any questions relating to the maintenance of international peace and security brought before it by any member or members of the organization or by the Security Council; and to make recommendations with regard to any such principles or questions."

The Security Council, according to the proposals, would consist of representatives of five states with permanent seats (because of their capacity to contribute to the maintenance of peace), and of six states elected by the

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Assembly to fill non-permanent seats. This Council is to have "prima responsibility for the maintenance of international peace and security."

The proposals also envisage the establishment of an international court of justice as the principal judicial organ of the organization, the statute of which should be either (a) the Statute of the Permanent Court, of International Justice, continued in force with such modification as may be desirable, or (b) a new statute in the preparation of which the Statute of the Permanent Court of International Justice should be used as a basis.

Thus, in its essentials, the international organization envisaged in the Proposals of Dumbarton Oaks embodies substantially the same concepts as those previously endorsed by the American Bar Association. The Committee on Constitutional Principles for a World Order is now to examine the detailed proposals, primarily from the viewpoint of the underlying principles, in order to formulate recommendations as to what the attitude of the Association should be concerning them.

IMPORTANT PRONOUNCEMENTS OF SENATORS BURTON AND AUSTIN

In conjunction with the work of the Section significant statements were made by two of the Senate advocates of international coöperation. At the joint meeting of the Section with the Inter-American Bar Association at the Pan American Union Building, Washington, D. C., on January 28, 1944, Senator Harold H. Burton, of Ohio, who is one of the authors of the trend-setting Senate Resolution No. 114 of March 16, 1943, enumerated the various international organizations and agreements, and the series of declarations, in which the United States had participated. The natural sequel was Senate Resolution No. 192, of November 5, 1943, which, in his opinion, "constitutes the one current declaration by the Senate of the United States as to its future international policy."

Senator Burton also quoted the Section's resolution, adopted by the Association on March 30, 1943, which endorsed the establishment of an effective international order, and concluded that the unity of the United Nations, which have been brought together by war, is vital in peace and that "the next step, therefore, should be the meeting of representatives of all the United Nations, large or small, for the purpose of forming an organization of the United Nations in the interest of establishing and maintaining peace and security in the world." The realization of this suggestion has already been partially fulfilled in less than a year at Dumbarton Oaks.

Senator Warren R. Austin, of Vermont, presented his thesis that the United States Government can legally become one of the founders and an active member of a cooperative organization of sovereign nations for security, at the luncheon opening the Section's spring meeting, at the Mayflower Hotel, Washington, D. C., on April 28, 1944. After a careful analysis of the effect of international agreements upon the external sovereignty of the nation, Senator Austin, who was one of the eight members of the Foreign Rela-

tions Committee selected to consult with Secretary of State Hull on plans for an international organization, concluded that "the adoption by the 78th Congress of the Fulbright Resolution of the House, the Connally Resolution of the Senate, as well as the Foreign Policy Declaration by the Republican Postwar Advisory Council at Mackinac, evidences the faith of our people in the feasibility of a cooperative organization in which each nation can legally condition its sovereignty without in any material degree impairing its political power or dignity and without injuriously affecting its internal sovereignty."

"A primary need for security," Senator Austin stated, "is the establishment of an international code of fundamental rules of conduct among nations," and quoted from the report of the Committee on Postwar International Judicial Organization the following:

If international injustice and violence are to be supplanted by a reign of law in international society, the members of the Family of Nations must provide orderly processes whereby any suitor or claimant, right or wrong, may have his day in court before an impartial judicial body.

POSTWAR JUDICIAL ORGANIZATION

The need for establishing more readily accessible permanent international courts for the adjudication of all justiciable disputes among nations, and the demonstrated advantage in having members of the highest tribunals serve on circuit courts, were the basic reasons for the Section's recommendations concerning a postwar international judicial organization adopted by the House of Delegates on September 13, 1944. The report of the Section's Coördinating Committee on this subject, and the address of its chairman, James Oliver Murdock, presented to the Assembly on the morning of September 13, 1944, contain cogent arguments for the adoption of a carefully worked out plan which can be integrated with the Dumbarton Oaks proposals for an international court of justice.

The report recalls that, since the Permanent Court of International Justice was established at The Hague in 1922, it has delivered only thirty-two judgments and twenty-six advisory opinions. In contrast, temporary tribunals formed under special agreements between nations have decided some 50,000 cases.

In practice, only major controversies between nations have been referred to the World Court and, while temporary tribunals have handled the mass of international litigation, they are not satisfactory because of the long delays that usually precede their being set up and the fact that, though their sessions frequently extend over many years, they still leave many cases undecided.

Hence the present methods of adjudication are wholly inadequate from the viewpoint of accessibility and continuity. In the case of governmental injuries to individuals in violation of international law, there is no adequate administration of justice. The committee therefore looked to the early development of the conin Europe, England, and the United States as examples. It found, in the case of this country, for example, that, after it was established in 1789, the Supreme Court had six members, two of whom were assigned to each of the three circuits—the Eastern, the Middle and the Southern. These two would sit with a district judge as a circuit court twice a year in each district. While they existed, the circuit courts had original jurisdiction of all the more important causes cognizable in the federal courts, other than those in admiralty and bankruptcy, and of some criminal cases.¹

Although the Supreme Court had little to do in the first few years of its existence, the bringing of justice to the peoples of the thirteen States through the visits of its members on circuit gradually developed public confidence in resorting to it for the settlement of disputes.

In view of the somewhat similar experience had in other nations as well, the Coördinating Committee proposed that provision should be made for the judges of the World Court to proceed to each member nation to sit as a circuit court for annual or special terms.

This idea is clearly stated in the resolutions adopted by the Association, as follows:

I. That the Permanent Court of International Justice, organized in 1922 at The Hague and known as the World Court, should be continued as the highest tribunal of an accessible system of interrelated permanent international courts with obligatory jurisdiction.

II. That the World Court be so organized that a member shall be available to sit as an International Circuit Court, with original jurisdiction, to hold regular terms in the Capital of each member Nation of the International Judicial System. In addition to the World Court Justice on Circuit, each such Circuit Court shall include one or more International Commissioners assigned to sit in an advisory capacity.

III. That an International Judicial Conference composed of jurists should be called at the earliest practicable moment with a view to concluding an "International Judiciary Agreement" based on the Statute of the World Court, with such amendments as may be necessary to give effect to the foregoing resolutions and to provide for the prompt organization and maintenance of the "International Judicial System."

Instead of having only one judge go on circuit to a given country the above plan might be modified so as to envisage a panel of at least three judges sitting in the capital of a defendant nation. The development of such details for carrying out the general plan, as well as consideration of the entire system for settling international disputes in Section A of Chapter VIII of the Dumbarton Oaks proposals, are assigned to a new Section committee on Pacific Settlement of International Disputes, the chairman of which is James Oliver Murdock.

¹ Rose, Federal Jurisdiction and Procedure, pp. 88, 89, 90, 95.

- Codification of International Law

The opinion has been frequently expressed that, if an international security and judicial organization is established, the rules of conduct of nations and of international law in general should be codified. A committee has therefore been appointed, with Professor Philip C. Jessup as chairman, to review the various attempts at codification which have been made in the past and to consider what progress towards that end can reasonably be expected in the near future.

PUNISHMENT OF WAR CRIMINALS

The punishment of war criminals is another subject on which the House of Delegates has asked the Section to make a study and report. The need for a positive recommendation was obviated by the Moscow Declaration on German Atrocities, which stated, inter alia, that "the Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian or Norwegian hostages or Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in the territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged." (Italics supplied.)

At the Section meeting on January 28, 1944, the Chairman of the Committee, Mr. George A. Finch, presented a very interesting summary of the activities of the United Nations Commission for the Investigation of War Crimes, which meets in London. Lt. Col. Willard B. Cowles, with the permission of the Judge Advocate General of the Army, presented at that meeting an exhaustive and authoritative paper on the international and military law involved, entitled "Trial of War Criminals by Military Tribunals." ²

A United Nations Commission for the Investigation of War Crimes began work in London on October 26, 1943. Most of the nations represented on the Commission have established national offices attached to their Ministries of Justice working through the War and Navy Departments to gather evidence of war crimes and submit it to committees of the London Commission. There the evidence is examined and a decision reached whether it is sufficient to justify a demand on the part of the United Nations that the accused individuals be apprehended and turned over for trial. It is expected that the terms of surrender will stipulate for the rendition of all enemy persons whose names are entered upon the lists of the accused after investigation by the United Nations Commission.

Other committees of the London Commission have under active consideration such difficult questions as the appropriate tribunal, whether national or international, to try the accused individuals according to the nature and place of the crimes with which they are charged, the law that may be applicable in

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each case, the methods by which apprehension may be effected in cases who the accused are not surrendered, and other special legal problems.

The Section's Committee has pointed out that in some quarters there are associated with the term "war crimes" acts of oppression and inhumanity inflicted by some of the enemy governments upon their own nationals within their own territories and not only during the war but in the years immediately preceding the actual outbreak of hostilities. There is no rule of international law, either customary or conventional, by which an enemy person may be held criminally responsible by the military or civil courts of other countries for acts committed within his own territory and against his own fellow The right under international law in such cases is limited to official protest; when that is not heeded action based upon political responsibility may be justified. For instance, the terms of surrender might stipulate the retribution to be exacted, without previous "trial according to law," of enemy persons whose crimes against humanity and justice have shocked the conscience of mankind and already convicted them in the public mind. Moreover it may be and probably does happen in the commission of such acts that the law of the offending state has itself been violated, in which case punishment in the courts of the enemy state may be legally possible when its criminal administration has been driven from power.

This committee will continue to follow developments in regard to the punishment of war criminals with a view to submitting a report at the next annual meeting of the Association.

SETTLEMENT OF PROBLEMS ARISING OUT OF THE WAR

The question of obtaining the restitution of American-owned businesses and property in enemy or enemy-occupied countries, or compensation, if they have been damaged, destroyed, looted or lost, is of primary concern as a preliminary step to reconstruction. This problem is, of course, interrelated with that of the treatment of enemy property that has been frozen by the Foreign Funds Control or vested in the Alien Property Custodian in this country. The latter subject has been entrusted to the Association's Committee on Custody and Management of Alien Property, of which the chairman, Otto C. Sommerich, and several members are also members of the Section. To consider primarily the first subject, a Section Committee on Treatment of American Property Rights in the War Settlement has been appointed, with John P. Bullington as chairman. These two committees will, of course, coöperate, as it is desirable to avoid any solutions which are confiscatory, and to apply, if possible, the same principles of international law in settling all questions involving private property.

It may be recalled that the Treaty of Versailles provided for a Mixed Claims Commission to adjudicate the claims of United States citizens and corporations against Germany for compensation in respect of property which had been damaged or destroyed. Presumably there will be occasion to adjudicate similar claims arising out of the present war, not only against Germany but also against Italy and Japan. Doubts have been expressed as to the wisdom of resorting again to a mixed claims commission such as that established under the Treaty of Versailles. A committee has therefore been appointed, the chairman of which is Commander Amos J. Peaslee, to review the operation of the Mixed Claims Commission and consider whether it would be more desirable to establish some other form of tribunal for settling claims against enemy governments after the present war.

COMMITTEES CONCERNED WITH PHASES OF POSTWAR RECONSTRUCTION

The importance of considering economic problems in connection with measures for the maintenance of peace is manifest in the Dumbarton Oaks proposals concerning the Economic and Social Council. The regulation of cartels and international arrangements restricting trade is receiving not only international attention, but particularly the attention of our own governmental authorities, including the Federal Trade Commission. Commissioner Robert E. Freer, chairman of the Federal Trade Commission, is, in his private capacity, chairman of the Section's Committee on International Trade Regulation. The Section, at its Chicago meeting, approved a report and recommendations submitted by Chairman Freer, which discussed various proposed controls for international trade, including a special tribunal which should be integrated with a postwar judicial system. It is the opinion of the committee that, in so far as the United States is concerned, the nature and interest of American participation in international economic controls should be governed by the following principles:

- 1. American participation in regulating international trade should be in harmony with the preservation within the United States of a democratic capitalism motivated by predominantly private competitive enterprise.
- 2. The development of foreign trade should be the function of private enterprise. American governmental intervention in international trade relations should be limited to commitments which have as their purpose the reduction, so far as is practicable, of uneconomic restrictions upon foreign trade and the maximum implementation of American competitive capitalism consistent with:
 - (a) the promotion of trade relations with countries having similar or diverse political and economic structures, and
 - (b) the reconciliation of conflicting public and private interests within the United States, as well as between the nations and nationals thereof with which international trade relations are maintained.

With appropriate modifications, similar principles can be formulated and adapted to the diverse internal economic policies of other nations.

EXPORT ASSOCIATIONS

Without expressing its opinion as to the merits in other respects of H.R. 4493, introduced on March 27, 1944, 78th Congress, 2nd Session, the com-

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mittee disapproves Section 5 of the said bill, which provides for the repeal of the Webb-Pomerene Act of April 10, 1918, for the following reasons:

American exporters should be placed as nearly as possible on a plane of equality of opportunity in competing in foreign markets. This principle underlies the Webb-Pomerene Act of 1918 (Export Trade Act), which was passed to enable American exporters to meet the competition of foreign combinations or cartels. Administered by the Federal Trade Commission, Section 2 of the law provides that nothing contained in the Sherman Antitrust Act

shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: And provided further, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

It is further provided in Section 4 that the prohibition against unfair methods of competition contained in the Federal Trade Commission Act

shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

The Committee believes that the principles embodied in the Webb-Pomerene Act constitute sound methods of affirmatively promoting the interests of American exporters without sacrifice of the fundamental policy of our antitrust laws as they bear upon the domestic markets of the United States. In so far as the associations formed under the Export Trade Act engage in activities which have their economic impact solely in the foreign markets in which they are actively in competition with powerful foreign combines, no reason is perceived why they should not be permitted to enter into international agreements with the nationals of those foreign combines to the extent reasonably necessary to place American firms on an equal footing with their foreign competitors. This is the minimum of defensive strategy. It does not present to the export associations the alternative of either fighting or joining international cartels.

In supporting this view the Committee emphasizes its adherence to the policy of the antitrust laws whereby agencies of the Federal Government entrusted with the enforcement of those laws should be continually vigilant

* 40 Stat. 516, ch. 50.



to strike down restraints in our domestic markets flowing from international agreements. The authority granted to the Federal Trade Commission under the Export Trade Act and the powers of the Antitrust Division of the Department of Justice are adequate to meet that enforcement task.

TRANSPORTATION AND COMMUNICATIONS

Proposals for the regulation of international air transport as well as the development of international radio, telephone, and cable communications are within the purview of the Section's Committee on International Transportation and Communications, the chairman of which is Carl I. Wheat. During the past year, the committee has been endeavoring to follow the many proposals that are being formulated in governmental circles and has collaborated with a standing committee on aeronautical law of the Association in considering the problems of international air-space rights and so-called "freedom of the air." The proposals emanating from the international conference on civil aviation, held in Chicago in November and December, 1944, will be studied with particular interest by this committee.

As regards international communications the committee states that it is a field in which the principle of regulated monopoly seems especially applicable.

During the past year a merger of domestic telegraph companies has been successfully accomplished, and there has been much discussion of a possible. merger of American international communications carriers. The extent to which such a merger should go in respect to the companies potentially involved, and also in respect to the types of services rendered, has not yet been An interdepartmental committee of governmental officials, under the leadership of the Department of State, has examined the problem in detail but has not as yet made public its findings. A Senate sub-committee, headed by Senator Burton K. Wheeler of Montana, is at present conducting informal conferences with interested companies and governmental officials, and it is understood that public hearings will follow in the The subject is complex, but an adequate, overall solution of the problem would doubtless be a matter of large public import since, without such a solution it seems improbable that American international communications of the postwar period can be freed from the powerful hold which certain non-American communications methods of operation have had over many years upon this world-embracing activity of modern life.

The obvious necessity of including both cables and radio-telegraph operations in such a merger of American companies has been widely recognized. Whether international radio-telephone operations should likewise be included is still the subject of wide discussion. Little has been said or apparently even noted, however, with respect to the factor which may well prove in the end to be most important of all in this connection,—i.e., the vast, integrated, and world-wide communications system developed and operated by the American Army Signal Corps, and (to a lesser degree because of its greater

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specialization) the somewhat similar system developed and operated by the United States Navy. In the opinion of the Committee, it would be nothing less than a national disaster if these two great systems should be allowed to be scrapped after the war, rather than to be utilized to the greatest degree practicable in the American international postwar communications complex. Whether this can or should be accomplished through the treatment of such systems as property to be made a direct part of the merger, or whether some other means of their inclusion may prove more appropriate, must be the subject of further study, as must also be the somewhat related issue of the relation of government to the ownership and operation of a merged international communications carrier, and the similarly related issue of the proper governmental vehicle of regulation over such carrier's operations and changes.

INTERNATIONAL DOUBLE TAXATION

Recognition is increasingly being given to the fact that excessive taxation on the income arising from international trade and investments can be an obstacle to economic reconstruction after the war, and particularly if income or property is subject to taxation in two or more countries. The Committee on International Double Taxation has been urging that measures to prevent double taxation, as well as discriminatory and extraterritorial taxation, be brought into effect either through bilateral treaties or provisions in internal legislation. The credit for foreign taxes allowed in section 131, Internal Revenue Code, is an example of the way in which a government by unilateral action can relieve its citizens and corporations from double taxation. However, amendments to the Revenue Act sometimes result in encroachments on the intended relief from double taxation, and encroachments of this nature were removed by section 130 (a) and (b) of the Revenue Act of 1943.

The United States has concluded conventions to prevent double income taxation with France, Sweden, and Canada, which have been very helpful to American citizens and corporations with investments or business establishments in those countries. A convention with Canada to prevent double taxation in the case of estate taxes and succession duties was signed on June 8, 1944, ratified by Canada on August 5, 1944, and approved by the United States Senate on December 5, 1944. The treaty embodies definitions of situs and, generally speaking, provides for relief by stating that the country in which the owner dies domiciled (or of which he is a citizen, if the decedent is an American) will grant a credit against its tax on the entire estate for the tax paid to the country where the property has its situs.

The treaty applies only to dominion taxes of Canada and the federal taxes of the United States, and does not affect the death taxes of the provinces of Canada and the states of this country.

The negotiation of similar conventions with Great Britain, in the field of income as well as death taxes, has been announced and exploratory discus-

sions with certain countries of Latin America have been undertaken. The importance of tax treaties in encouraging inter-American trade and investments were recognized at the Conference of Inter-American Development Commissions held in New York, May 9-18, 1944, in the following recommendation:

That the national Commissions encourage their respective governments to consult and collaborate in the negotiation of bilateral treaties for the elimination of double taxation of income or capital, including extraterritorial and discriminatory taxation, and for the exchange of information between the governments concerned.

The subject of ways to bring about the conclusion of such treaties between the American Republics was on the agenda of the meeting of the Tax Committee of the Inter-American Bar Association in Mexico, July 31-August 8, 1944, which adopted resolutions concerning fundamental principles for preventing double taxation between countries of the Western Hemisphere.

PROBLEMS OF NATIONALITY

In the conclusion of treaties involving corporations subject to the laws of both contracting states the question of the method of determining nationality of juridical persons often arises. The normal concept that the nationality of a corporation is determined by the state under the laws of which the corporation was created is similar to the basic principle that the nationality of a person is determined by the country of birth, and questions of dual nationality of corporations can arise just as in the case of individuals. This is due to the tendency of courts, especially in wartime, to look through the corporation in order to determine the nationality of the stockholders who control it, or to regard the seat of the corporation as being in the country where the management and control are effectively exercised. In view of the growing need of treaties of establishment to protect the rights and property of American citizens in foreign countries, it has been thought desirable to make-a survey of the prevailing concepts of nationality of corporations and the extent to which they conflict. This work has been assigned to the Committee on Nationality of Natural and Juridical Persons, of which Henry F. Butler is chairman. This committee will, of course, follow developments in regard to legislation concerning the nationality of natural persons and particularly measures for the prevention of dual nationality.

FISHERIES AND TERRITORIAL WATERS

The protection of fisheries, particularly those located in territorial waters, has long been a matter of concern to the United States, and the problems involved are entrusted to a Committee on Fisheries and Territorial Waters, of which John R. Gardner is chairman. This committee reported at the Chicago meeting. With the advent of factory ships, the application of recent inventions have stimulated and greatly improved methods of transportation,

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communication facilities, and technological developments. Consequently, one may reasonably anticipate that the use of speedier long-range vessels, as well as the use of aeroplanes, blimps, helicopters, radar, and sonic depth finders in locating schools of fish, will result in the exploitation of the more distant fisheries of the world. Expecting that fisheries on the high seas will be exploited after the war more intensively than in the past, the committee stresses the need for appropriate regulation to the end that fisheries may be conserved and, at the same time, utilized to the best possible advantage. It is, therefore, working on proposals for such regulation, based on principles recognizing acquired historic fishing rights and interests.

In the meantime, the committee is keeping abreast of pending legislation concerning fisheries and projects for international cooperation.

COURT DECISIONS INVOLVING INTERNATIONAL LAW

From time to time the courts of the United States are called upon to render decisions involving treaties or principles of international law and it is, therefore, of interest to follow the development of international law through jurisprudence. Following the resignation of Eldon R. James, the chairmanship of the committee has been accepted by Harry LeRoy Jones, and the committee will continue the work of examining reported cases in most parts of the country which involve international law.

STUDIES IN COMPARATIVE LAW

War-time preoccupations and the difficulties of communication have arrested somewhat the activities of the various committees in the field of comparative law but, with the approach of peace, a renewed interest in foreign law is becoming manifest.

One of the most productive committees has been that on Latin-American Law, with Judge Otto Schoenrich as chairman. This committee reported at the annual meeting, on interesting developments in the legislation of the foreign countries of Latin America which are of importance from the viewpoint of international business. Taking this committee as an example, two committees with similar programs have been added, one on European Law, the chairman of which is Joseph H. Barkmeier, and the other on Far Eastern Law, with Judge Cornell S. Franklin as chairman. It is expected that there will be marked developments in business and tax laws in the various countries, and the reports of these committees should contain much of value to members of the Bar who have problems of foreign law.

The Committee on Civil Procedure and Practice, the chairman of which is Raymond T. Heilpern, is interested in formulating a convention on international judicial coöperation, primarily for the purpose of facilitating the securing of evidence when required from foreign countries.

The Committee on Comparative Penal Law and Procedure, the chairman of which is Commander James J. Robinson, has the dual task of examining the penal law of some of the occupied countries in relation to the punishment of war criminals, and of considering the laws of selected countries regarding the prevention of various international crimes, such as smuggling.

The subject of punishment of war criminals before military tribunals is one of the matters being considered by the Committee on Military and Naval Law, with Col. William Cattron Rigby as chairman.

Social, labor, and industrial legislation of other countries is the subject under consideration by a committee bearing that name, the chairman of which is Ellen L. Love.

A new committee which may produce findings of considerable interest, particularly in connection with the proposals for a postwar judicial organization, is the Committee on Comparative Law of Private Claims Against Governments, the chairman being Lt. Col. Heber H. Rice.

RELATIONS WITH FOREIGN LAWYERS

Since its foundation, the Section of International and Comparative Law has been interested in developing cordial and fruitful relations with the lawyers of other countries, and this led to the participation of a group of its members in the organization of the Inter-American Bar Association. Continuance of relations with the members of this association has been assured through the Committee on Coöperation with the Inter-American Bar Association, the present chairman of which is Charles Ruzicka. Officers and members of the Section have attended as delegates the meetings of the Inter-American Bar Association in Havana in 1941, in Rio de Janeiro in 1943, and in Mexico last August.

With the approaching end of the war in Europe, attention is being given to the renewal of relations with lawyers in England and on the Continent, as well as eventually in other countries, through the organization of an International Bar Association. It is hoped that the urge for uniformity, which manifests itself when lawyers of different countries discuss subjects of common interest, will gradually help to bring about uniformity in laws affecting international business relations. Work in the field of comparative law leads to the development of international law, and the principles formulated to obviate friction between individuals may have some influence in the evolution of rules of conduct between nations.

WAS THE SOVIET UNION EXPELLED FROM THE LEAGUE OF NATIONS?

By Leo Gross

Fletcher School of Law and Diplomacy

In the discussion of current problems of international organization frequent reference is being made to the action taken by the Council of the League of Nations in 1939 with reference to the membership of the Soviet Union.¹ While the matter may be thought to have interest chiefly for historians, it might serve a useful purpose to reëxamine the action taken in 1939 from a legal point of view. It is conceivable that a conclusion on the legal points involved might serve as a basis for removing some of the untoward features of the existing situation.

The Covenant of the League of Nations provides in paragraph 1 of Article 5 that

except where otherwise expressly provided in this covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

Express provision otherwise is contained in paragraph 4 of Article 16 of the Covenant, to the effect that

any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the representatives of all the other Members of the League represented thereon.

Before analyzing these two provisions of the Covenant it may be useful to recall certain provisions of the Rules of Procedure of the Council adopted by that body on May 26, 1933.³ Article VIII of the Rules provides that "the Council shall not discuss or decide upon any matter unless the majority of its members are present." ³ Article IX, paragraph 1, of the Rules restates with

¹ The Soviet publication "War and the Working Class" was reported to have made the following comment in discussing the Soviet Union's insistence on a unanimous vote of the Great Powers for dealing with any alleged case of aggression: "It is difficult to forget that the League of Nations did not find it necessary to expel Poland for seizing Vilna or Italy for invading Ethiopia, but voted for expulsion of the Soviet Union when it deprived Germany of a springboard prepared for invasion." See dispatch from Moscow in *The New York Times*, October 20, 1944, p. 6.

² League Doc.C.197.M.106.1938.

³ This provision was included in substance in Art. 6 of the Rules of Procedure of the Council adopted at Rome on May 17, 1920: Hudson, M. O., *International Legislation*, Washington, 1931–, Vol. I, p. 127,

some changes the fundamental principle of paragraph 1 of Article 5 of the Covenant quoted above. The last sentence of paragraph 3 of Article IX of the Rules states that "in counting the votes, abstentions from voting shall be disregarded." 4

It is obvious from a comparison of the provisions of the Covenant that the wording of paragraph 4 of Article 16 differs from that of paragraph 1 of Article 5. Whereas the latter requires the agreement of all Members of the Council present at the meeting,⁵ the former requires the concurrence of all Members of the League represented on the Council other than the Member which has been found to have violated a covenant of the League. It is generally admitted that Article 16, paragraph 4, departs from the unanimity rule of Article 5, paragraph 1, by excluding the vote of the interested State if that State is represented on the Council.⁶ On the other hand, it would seem to require, first, the presence in the Council of all Members of the League represented on the Council and, secondly, the affirmative concurrence in the vote of the Council of all Members represented on the Council. This interpretation of Article 16, paragraph 4, has been stressed by several students of the Covenant.⁷

⁴ This addition to the Rules of 1920 has apparently been overlooked by Cromwell A. Riches, Majority Rule in International Organization, Baltimore, 1940, p. 23, note 53.

⁶ D. H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. I, p. 285: "It was at first suggested to leave out the words 'at the meeting,' but after some consideration it was thought that they had better remain so as to prevent one State from stopping the holding of a meeting, or to cover the case when one Member might not find it possible to be represented."

• Schücking, W., and Wehberg, H., Die Satzung des Völkerbundes, Berlin, 1931 (3d ed.), Vol. I, p. 521; same, 1924 (2d ed.), p. 637. Sir John Fischer Williams, "The League of Nations and Unanimity," in this JOURNAL, Vol. 19 (1925), p. 486, argues that this exception depends "not only on the language of the Covenant but also on the general principles that no one is a judge in his own cause." See also the Treaty of Lausanne Case, Permanent Court of International Justice, Publications, Series B, No. 12, p. 32.

⁷ Schücking and Wehberg, work cited, Vol. I, p. 510: Bei der Ausschliessung eines Mitgliedes wegen Verletzung der Bundespflichten müssen gemäss Article 16, Abs. 4, der Satzung alle im Rate vertretenen Bundesmitglieder (mit Ausnahme des Auszuschliessenden) sich an der Abstimmung beteiligen. Es genügt hier also kein Beschluss des Rates, wenn in dessen Sitzung nicht alle Mitglieder (mit Ausnahme des Auszuschliessenden) vertreten sind. See also second edition, p. 637; Cromwell A. Riches, The Unanimity Rule and the League of Nations, Baltimore, 1933, p. 49: "In one case the Covenant clearly requires that more than a majority of the members be present for taking a decision. . . . It would seem, therefore, that, to exclude a member from the League, all members of the Council except the representatives of the state to be excluded would have to be present and cast affirmative votes while in all other cases the Council could act with only a majority present." Georges-Tibère Eles, Le Principe de l'unanimité dans la Société des Nations et les Exceptions à ce Principe," Paris, 1935, p. 188: Une telle exclusion ne peut être prononcée que par le vote de tous les Membres de la Société, autres que l'État à exclure, représentés au Conseil. Une réunion qui prononcerait l'exclusion d'un Membre devrait donc être au complet. D'autre part, comme le texte exige expressément "le vote de tous les autres Membres" etc., il semble difficile d'appliquer, dans ce cas, la règle d'après laquelle les abstentions n'empèchent pas l'unanimité. Also J. Ray, Commentaire du Pacte de la Société des Nations, Paris, 1930, p. 536.

It has been urged against this interpretation that the wording of Article 16, paragraph 4, is not definite enough "to exclude the necessity of reading it subject to Article 5, paragraph 1." ⁸ This view, it is said, is based on "legal interpretation" as well as "upon the undesirability of ever preventing the Council from takin, necessary decisions, even if by chance or by design a state entitled to be represented is not so represented." ⁹

It is true that in general the practice of the Council, even before it crystallized in paragraph 3 of Article IX of the Rules of Procedure of the Council adopted in 1933, was based on the assumption that "abstention did not prevent unanimity from being secured." ¹⁰ It is equally true that the practice of the Council even before it crystallized in Article VIII of the Rules of 1933 did not support the view expressed by the Brazilian representative at the Meeting of the Council held on June 10, 1926, that whereas the presence of all its Members is not necessary for a meeting of the Council, the Council could not take any action or any decision if it were deprived of the presence of one of its Members either owing to resignation or owing to a final severance from the League.¹¹

If this view were accepted then indeed the Council, in exercising its power under Article 16, paragraph 4, would be justified in applying Article VIII of the Rules of Procedure of the Council concerning the quorum and also Article IX, paragraph 3, last sentence, concerning abstentions from voting. such a view would not adequately interpret the conditions laid down in Article 16, paragraph 4, follows from Article 5, paragraph 1, of the Covenant and from Article IX, paragraph 1, of the Rules, both of which provide for exceptions from the general principle of unanimity which they formulate. This part of Article 5, paragraph 1, must be given the weight that is due to Otherwise what would be the purpose of providing for exceptions if every exception had to be negatived by reference to the general principle? submitted that if the wording of Article 16, paragraph 4, is deemed sufficiently definite to exclude the State against which the proceedings are directed from the vote of the Council, and this has not been contested, then there is no reason to believe that the remainder of this paragraph is couched in less definite language. These exceptions of Article 16, paragraph 4, to the general principle of unanimity of Article 5, paragraph 1, stand together. If one is admitted there is equal reason to admit the other.

This interpretation finds support in the preparatory work bearing on the

Julius Stone, "The Rule of Unanimity: the Practice of the Council and Assembly of the League of Nations," in 14 British Year Book of International Law (1983), p. 31.

⁹ Same.

¹⁰ Committee on the Composition of the Council. Part I. Report on the Work of the First Session. Doc.C.299.M.139.1926.V, p. 26. The words quoted above were spoken by M. Motta, Chairman of the Committee. Similar views were expressed by other Members of the Committee, in particular by M. Scialoja. Same, p. 26.

¹¹ League of Nations, Official Journal 1926, p. 888. See same, p. 890, for the views of M. Scialoja and M. Paul-Boncour.

history of paragraph 4 of Article 16. This provision was introduced in the Drafting Committee of the Commission on the League of Nations which on April 1 and 2, 1919 discussed the Hurst-Miller text of the Covenant. It was apparently intended by the Drafting Committee that it should constitute a separate article numbered XVII A. The incorporation of this new Article XVII A into Article 16 of the Covenant as paragraph 4 of that Article was presumably done by Messrs. Miller and Hurst. It may not be immaterial to recall in this connection that according to contemporary comment the provision introduced in the Drafting Committee was intended "to meet the case of a State which after breaking its covenant still claims to vote on the Council or in the Assembly." A similar reason is advanced by Florence Wilson and the British Commentary on the Covenant.

While the preparatory work with reference to the English text of paragraph 4, Article 16, contains no clue to the proper interpretation of this provision, some light is shed by the history of the French text. In the first French translation of the English text a State which has violated any of its obligations resulting from the Covenant could be excluded from the League par un vote du Conseil émis a l'unanimité des voix, moins la sienne, s'il y est représenté. The word "unanimité" is maintained in the Lapradelle text of April 16th and 17th and in the Larnaude text, agreed to by Mr. Miller, of April 18, 1919. However, in the "French print of April 21, 1919" the word "unanimité" was eliminated and a new formula substituted for it which reads as follows: L'exclusion est prononcée par le vote de tous les autres Membres de la Société représentés au Conseil. This new formula, which is not a perfect rendering of the English Text, is maintained in the French print of

¹² Miller, work cited, Vol. II, Docs. 28 and 30, pp. 658 and 672.

¹³ "Changes made by Drafting Committee," Memorandum of Mr. Baker intended to show the changes made by the Drafting Committee in the English Text before them (in Doc. 656). D. H. Miller, My Diary at the Conference of Paris, n.p., n.d., Vol. VII, Doc. 678, p. 404; see also same, Doc. 679, p. 409.

¹⁴ Same, Doc. 679, p. 406, note a and Doc. 681, p. 413, note a; see also text of the *Diary*, Vol. I, p. 219, note b.

^{15 &}quot;Note by the British Delegation on the Redraft submitted by the Drafting Committee": Miller, Drafting of the Covenant, Vol. I, p. 417. See also C. W. Jenks, "Expulsion from the League of Nations," in British Year Book of International Law, 1935, p. 156; Message from the Federal Council of Switzerland to the Federal Assembly of Switzerland concerning the Question of the Accession of Switzerland to the League of Nations, August 4, 1919, Cambridge, England, 1919, p. 130.

¹⁶ Miller, Diary, Vol. XIX, p. 30.

¹⁷ "The Covenant of the League of Nations with a Commentary Thereon," in British Parliamentary Papers, Misc. No. 3 (1919), Cmd. 151, p. 17.

¹⁸ "French Text of April 7, 1919," Miller, Drafting, Vol. II, Doc. 36, p. 768.

¹⁹ Same, Doc. 37, p. 783, where the Lapradelle Text is printed in the left and the Larnaude Text in the right column.

²⁰ Same, Doc. 38, p. 797.

²¹ Sir John Fischer Williams, "The League of Nations and Unanimity," in this JOURNAL, Vol. 19 (1925), p. 483, note 28.

April 23, 1919²², in the French Report of the Commission of the League of Nations of April 28, 1919,²³ and in the final French text of the Covenant.

The changes in the successive French translations of paragraph 4, Article 16, are significant. Mr. Miller assures us that "each French print had to be gone over from beginning to end, word for word, to see if and where it had been changed." 24 Referring specifically to the formula employed in the French print of April 21, 1919, mentioned above, he says: "The new translation of that paragraph is not a very literal rendering of the English, but its legal effect, I think, is exactly the same." 25 This statement constitutes a substantial corroboration of the interpretation of paragraph 4, Article 16, suggested above. There would hardly have been a valid reason for changing the unanimité employed in three successive French texts to the present wording if the English text had been understood to establish merely the conventional unanimity. The conclusion seems inevitable that the English text was not so understood and that not unanimité but only the precise words le vote de tous les autres Membres de la Société représentés au Conseil express the correct legal meaning of Article 16, paragraph 4.

No useful purpose would be served by denying that, assuming the above interpretation to be correct, the Council could under certain conditions be prevented from taking necessary decisions under Article 16, paragraph 4. This may be regrettable, but it would seem that the precise wording of paragraph 4, Article 16, leaves no room for the introduction of "legal correctives." If a state which is entitled to be represented on the Council is, by design, not so represented, and thus prevents the Council from declaring a Covenant-breaking state to be no longer a Member of the League, the consequence is the same as if that state had exercised the veto power to which it is entitled. The same is true of states which are represented on the Council but which refrain from taking part in the vote. On the other hand, the accidental absence of a State represented on the Council from a meeting of the Council could cause but a temporary delay.

It may be useful to recall that, prior to its decision of December 14, 1939, the Council had never exercised the power conferred upon it by Article 16, paragraph 4. Its possible application was, however, discussed on various occasions. It was considered in 1921 as a sanction in the case of states which failed to pay the contributions due from Members under Article 6, paragraph 5, of the Covenant.²⁷ It was stated in 1934 by Mr. Eden that in

²² Miller, *Drafting*, Doc. 39, p. 810.

²⁵ Same, Doc. 40, p. 825. - ²⁵ Same, p. 523.

²⁴ Same, Vol. I, p. 522.

²⁶ Committee on the Composition of the Council. Part I. Report on the Work of the First Session. C.299.M.139.1926.V, p. 15.

²⁷ "Report of the Subcommittee of the Committee on Amendments to the Covenant presented to the Plenary Committee," Doc.A.C.13.1921. See also "Legal Position of States which do not pay their Contribution to the League," Report by the Secretary-General submitted to the Council on March 9, 1927: Doc.C.36.1927.V. League of Nations O.J., 1927, p. 505. Ray, work cited, p. 273, 535.

the view of the United Kingdom Government, Liberia had so grossly failed to observe the undertaking of Article 23, paragraph b, of the Covenant that the League would be quite entitled to consider her expulsion under paragraph 4 of Article 16.28 Writers on the subject emphasized the general nature of the sanction of Article 16, paragraph 4, which could consequently be applied to the violation of any obligation resulting from the Covenant. 18 It was also pointed out that Article 16, paragraph 4, could be resorted to in order to overcome the deadlock resulting from the opposition of a Member to the application of measures which require a unanimous decision in the Council and which are directed against a Covenant-breaking state. 30

For the purpose of this analysis it seems unnecessary to state in detail the circumstances in which the Finnish Appeal of December 3, 1939, was received, and dealt with, by the League. The decisive stage in the League procedure was reached on December 14, 1939. Meeting at 10 A.M. on that day, the Assembly of the League of Nations discussed the Report provided for in Article 15, paragraphs 4 and 10, of the Covenant, submitted by the special Committee of the Assembly, and adopted a resolution the relevant parts of which read as follows:

The Assembly:

Ι

Whereas, by the aggression which it has committed against Finland, the USSR has failed to observe not only its special political agreements with Finland but also Article 12 of the Covenant of the League of Nations and the Pact of Paris;

- ²⁸ League of Nations, O.J., 1934, p. 511.
- ²⁹ Ray, p. 536; Schücking-Wehberg, 2nd ed., p. 636; Göppert, Otto, Organisation und Tätigkeit des Völkerbundes, Stuttgart, 1938, pp. 95, 198.
- Drecisely with a view to avoiding the difficulty indicated above the Assembly adopted the following amendment to Article 16 of the Covenant on October 4, 1921: "It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council the votes of Members of the League alleged to have resorted to war and of Members against whom such action was directed shall not be counted." On the other hand it was pointed out by M. de Brouckère in his Report on Point 1 (b) of the Proposal laid before the Preparatory Commission for the Disarmament Conference by the French Delegation, that "if Article 16 is only resorted to in cases to which it properly applies, the amendment proposed in 1921 with regard to the calculation of unanimity loses much of its importance. In cases where a state has shown its definite intention to disturb the peace, to defy the whole of the League, and, furthermore, to break the most solemn of undertakings which it has given to its fellow Members, expulsion, as contemplated in Article 16, seems inevitable and the votes which it will no longer be called upon to cast are surely not a matter of great concern. But the difficulty pointed out in 1921 may recur in a fresh form when Article 11 of the Covenant comes to be applied." "Reports and Resolutions on the Subject of Article 16 of the Covenant." Doc.A.14.1927.V, pp. 42, 70, 71.
 - n The relevant documents will be found in League of Nations O.J., 1939, p. 509.
- 22 On December 11, 1939, the Assembly, having heard the statement of the Delegate of Finland, decided to set up a Special Committee to study the appeal of the Finnish Government. Records of the Twentieth Ordinary Session of the Assembly, Plenary Meetings, p. 11.

AND WHEREAS, immediately before committing that aggression, it denounced, without legal justification, the Treaty of Non-aggression which it had concluded with Finland in 1932, and which was to remain in force until the end of 1945:

Solemnly condemns the action taken by the USSR against the State of Finland; . . .

TT

Whereas, notwithstanding an invitation extended to it on two occasions, the USSR has refused to be present at the examination of its dispute with Finland before the Council and the Assembly;

AND WHEREAS, by thus refusing to recognize the duty of the Council and the Assembly as regards the execution of Article 15 of the Covenant, it has failed to observe one of the League's most essential covenants for the safeguarding of peace and the security of nations;

AND WHEREAS it has vainly attempted to justify its refusal on the ground of the relations which it has established with an alleged Government which is neither de jure nor de facto the Government recognized by the people of Finland in accordance with the free working of their institutions;

AND WHEREAS, the USSR has not merely violated a covenant of the League, but has by its own action placed itself outside the Covenant;

AND WHEREAS the Council is competent under Article 16 of the Covenant to consider what consequences should follow from this situation:

Recommends the Council to pronounce upon the question.33

This resolution was adopted unanimously although several Members represented at the meeting refrained from voting.¹⁴

The Council, meeting in the afternoon of the same day, adopted a Resolution reading as follows:

The Council,

having taken cognisance of the resolution adopted by the Assembly on December 14, 1939, regarding the appeal of the Finnish Government;

- 1. Associates itself with the condemnation by the Assembly of the action of the USSR against the Finnish State; and
- 2. For the reasons set forth in the resolution of the Assembly,

The Committee had referred to it a number of written and verbal proposals and declarations including that of the Argentine delegation at the plenary meeting on December 13th. The delegate of the Argentine in his address of December 13, 1939, stated that the Soviet Union had "placed itself outside the Covenant" and, demanding "the expulsion of the Soviet Union from the League of Nations," he concluded by voicing his "Government's unalterable decision, that the Argentine Republic can no longer consider itself a Member of the League of Nations as long as the Soviet Union is able to claim that title." Same, pp. 14, 16, 17. The Report of the Special Committee, dated December 13, 1939, Doc.A.46.1939.VII, will be found in League of Nations O.J., 1939, pp. 531-541.

^{**} Records of the Twentieth Ordinary Session of the Assembly, Plenary Meetings, p. 53.

Paragraph 5 of Rule 19 of the Rules of Procedure of the Assembly provides: "For the purpose of this Rule, representatives who abstain from voting shall be considered as not present." Rules, Revised edition, April 1937. Doc.C.144.M.92.1937.

In virtue of Article 16, paragraph 4, of the Covenant,

Finds, that, by its act, the USSR has placed itself outside the League of Nations. It follows that the USSR is no longer a Member of the League.²⁵

At the end of the discussion the President spoke as follows:

The Council will take note of the statements that have just been made and, as abstentions do not count in establishing unanimity, if there are no other observations, I shall take it that the draft resolution has been adopted.²⁶

The resolution of the Council gives rise to several questions. In the first place was the resolution adopted in accordance with Article 16, paragraph 4, of the Covenant? At the time of the vote fourteen states Members of the League were represented on the Council. Seven Members appear to have assented to the resolution, viz., France, Great Britain, Bolivia, Belgium, the Dominican Republic, South Africa and Egypt. Several states represented on the Council and present at the Meeting, viz., China, ³⁷ Finland, Greece, and Yugoslavia abstained from voting. Two states represented on the Council, apart from the USSR, viz., Iran and Peru, were not represented at the Meeting.

Having regard to the circumstances attending the vote of the Council, it seems necessary to conclude that the Council's resolution of December 14, 1939, did not have the legal effect of terminating the membership of the USSR in the League of Nations. The Council's resolution was not an exercise of the power conferred upon the Council by paragraph 4, of Article 16. Owing to the absence of Iran and Peru ³⁸ from the Meeting, all states Members of the League which were at the time represented on the Council were not represented at the Meeting, and, owing to the abstention of China, Finland, Greece, and Yugoslavia all states represented on the Council other than the USSR did not affirmatively concur in the vote of the Council. For these two reasons the conditions laid down in Article 16, paragraph 4, appear not to have been fully satisfied. The Council has never met since December 14, 1939, and the legal effect of the resolution of that date has not been examined by the Council itself.

- 25 League of Nations O.J., 1939, p. 506.
- E League of Nations O.J., 1939, p. 508. Before submitting for the Council's approval the draft resolution the President reminded the delegates of the provision of Article 16, paragraph 4. Having quoted verbatim the text of that paragraph, he then said: "Article 16, paragraph 4, of the Covenant, which I have just read to you, provides for a vote by the Members of the League represented on the Council." Same, p. 506.
- ¹⁷ The Delegate of China declared that in the absence of final instructions from his Government he would abstain from the vote to be taken on the resolution before the Council. Same, p. 508.
- ³⁸ Peru withdrew from the League on April 9, 1941, having given notice of withdrawal on April 8, 1939, in accordance with Article 1, paragraph 3, of the Covenant. League of Nations O.J., 1939, p. 204.

With reference to the substance of the Council's resolution it may be recalled that the first part of the finding "that, by its act, the USSR has placed itself outside the League of Nations," was subject to some criticism. Indeed it was pointed out by the Representative of the Netherlands in the course of the discussion on the Assembly resolution, which contains the same statement, "that the Netherlands Government does not greatly favor this expression, which has no basis in the articles of the Covenant." 89 This is of special importance as the second part of the Council's finding is deduced from the first. It may be argued that if the premise is open to doubt, the conclusion is necessarily also open to doubt. According to the Covenant a state Member of the League does not cease to be a Member ipso facto and does not lose its rights and duties as a Member as a consequence of the violation of its obligations under the Covenant. 40 On the contrary, in its capacity of Member it becomes subject to such sanctions as may be decided upon by the competent organs of the League. As several precedents convincingly demonstrate, the wrong-doing state continues to be a Member of the League until the termination of its Membership in accordance with one of the three modes established in the Covenant.41

The resolution of the Assembly which is incorporated by reference in the resolution of the Council is not sufficiently precise in stating the covenant which the USSR had violated and on the basis of which it should be declared to be no longer a Member of the League. The application of paragraph 4 of Article 16 is clearly limited to the violation of a covenant of the League. The Assembly resolution, however, refers to the Pact of Paris and to the Russo-Finish Treaty of Non-aggression of 1932. In addition the resolution charges the USSR in the first part to have failed to observe Article 12 and in the second part to have failed to observe one of the League's most essential covenants for the safeguarding of peace and the security of nations by refusing to recognize the duty of the Council and the Assembly as regards the execution of Article 15 of the Covenant. And yet in the operative part of the Assembly resolution it is stated that the USSR has violated." a covenant" of the League and in the finding of the Council it is stated that "by its act" the USSR has placed itself outside the League. It is difficult to decide which of the two or more failures to observe international engagements set forth in the Assembly resolution was the basis for the action of the Council.42 It will be recalled that, according to the preparatory discussions, the purpose of including Article XVIIA, which later became the fourth paragraph of Article 16, in the Covenant was "to meet the case of a state which

Records of the Twentieth Ordinary Session of the Assembly, Plenary Meetings, p. 35.
 Göppert, p. 94.

⁴¹ The Rules and Procedure Governing Admission to and Loss of Membership in the League of Nations. Report of the Special Committee set up to study the Application of the Principles of the Covenant. Doc.A.7.1938.VII, p. 59.

⁴² Oppenheim, L., *International Law*, Vol. II, London, 1940 (6th ed., by Lauterpacht), p. 137, note 2.

THE OLD AND THE NEW LEAGUE: THE COVENANT AND THE DUMBARTON OAKS PROPOSALS

By Hans Kelsen

The result of the conversations between the delegations of the United States, the United Kingdom, the Soviet Union, and China at Dumbarton Oaks, Washington, in the Autumn of 1944, is not a Charter for the international organization to be established after the war. It is only Proposals for such a Charter; these Proposals are, moreover, as Secretary of State Cordell Hull pointed out, neither complete nor final. They do not concern all subject matters to be regulated by the future Charter and do not present precise formulations of legal rules to be binding upon contracting parties. This work still remains to be done. Hence it may seem to be premature to compare the Dumbarton Oaks Proposals with the Covenant of the League of Nations. Such a comparison cannot do justice to the achievements at Dumbarton Oaks; it is justifiable only as an attempt to contribute some suggestions for the great task of drafting the definitive text of the future charter; it must not be taken as a conclusive criticism.

I. PURPOSES AND GENERAL STRUCTURE OF THE OLD AND THE NEW LEAGUE

A. Purposes.

The purposes and the general structure of the international organization to be established according to the Dumbarton Oaks conversations are about the same as those of the old League of Nations. The Preamble of the League of Nations says concerning its purposes:

The High Contracting Parties, in order to promote international cooperation and to achieve international peace and security by acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, agree to this Covenant of the League of Nations.

Chapter I of the Dumbarton Oaks Proposals runs as follows:

The purposes of the Organization should be: 1. To maintain international peace and security; and to that end to take effective collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means adjustment or settlement of international disputes which may lead to a breach of the peace; 2. To develop friendly relations among nations and to take other appropriate measures to strengthen universal peace; 3. To achieve international coöperation

in the solution of international economic, social and other humanitarian problems; and 4. To afford a center for harmonizing the actions of nations in the achievement of these common ends.

The chief difference between the Preamble of the League Covenant and Chapter I of the Dumbarton Oaks Proposals consists in the fact that the latter emphasize more strongly the realization of the purposes of the new League. Stress is laid, from the very beginning, on the executive branch of the new Organization: "take effective collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace." In the Preamble of the League Covenant, on the contrary, not the slightest reference is made to the way in which the principles laid down in the Covenant may be enforced. This is very characteristic. For it is exactly in this direction that great progress has been made on the way from Geneva to Dumbarton Oaks.

On the other hand, the Preamble of the Covenant of the League of Nations accentuates the maintenance of international law. Peace and security are to be promoted "by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another." Nothing of this kind is said in the Dumbarton Oaks Proposals and this too is characteristic of the organization intended by the recent conference. To define this feature of the new League in the usual way we may say that the organization is to have a political rather than a legal character. This means that its activity is not to be limited too much by strict rules of law but that the Charter shall confer upon the agencies of the new League a great deal of discretion in the exercise of their functions.

B. Membership.

This difference between the new and the old League is not reflected in their organization. The former is to have the same main organs as the latter: a General Assembly, a Security Council, an International Court of Justice, and a Secretariat. But there are essential differences in the functions of and the mutual relations among some of these organs.

The League of Nations had, at least in principle, a universal character. It was meant to comprise all states of the world. The new League is to be established as a community of the victorious states. This is manifested by its title, The United Nations. It is true that, according to Chapter III, par. 1, membership in the Organization is to be open to all peace-loving states. But admission to the new League is regulated very differently from admission to the old one. Art. 1 of the Covenant of the League of Nations distinguishes between certain neutral states, named in an Annex to the Covenant, and other states not signatories to the Peace Treaties, of which the

Covenant is a part. The first mentioned states are privileged in so far as they are allowed to become members of the League of Nations by a unilateral declaration of adherence. For the states not named in the Annex admission to the League depends on a decision of the Assembly adopted without any The Dumbarton Oaks Proposals make no interference by the Council. distinction between states which are not signatories to the Charter of the new League; no group of states is privileged with respect to admission. According to Chapter V, Sec. B, par. 2 of the Proposals, "The General Assembly should be empowered to admit new members to the Organization upon recommendation of the Security Council." The decision of the General Assembly by which a new member is admitted is to be made—like the analogous decision of the Assembly of the League of Nations—by a twothirds majority. The difference between the two procedures consists in the fact that no admission to the new League will be possible without the consent of the Security Council.

If the international peace whose maintenance is declared a purpose of the Organization planned at Dumbarton Oaks is to be a "universal" peace, as is expressly stated in par. 3 of Chapter I of the Proposals, then the Organization established to maintain such peace should have a universal character too; membership in this organization should really be "open" to all peace-loving This would be the case only if any state is allowed to join the Organization on the condition that it accepts without reservation the obligations stipulated by the Charter. Its submission to the Charter proves its love for peace. In other words admission to a league for the maintenance of international peace should be as easy as possible. This requirement, however, is not fulfilled by the Dumbarton Oaks Proposals since admission depends, as pointed out, not only on a two-thirds majority of the General Assembly, but also on a recommendation of the Security Council. voting procedure in this agency is still under consideration. If it is true that one of the Great Powers prospectively signatory to the Charter insists on the principle that decisions of the Security Council shall be adopted only unanimously or by a majority in which the votes of all permanent members of the Council (that is to say, the Great Powers), are included, any Great Power, in its capacity as a permanent member of the Security Council, would be able to exclude from membership any state with which it did not wish to cooperate in the same organization. The Soviet Union has recently refused to participate in an international conference together with Switzerland, Portugal, and Spain, since those states according to the official explanation of the Soviet Union "for many years have maintained an inimical pro-fascist policy towards the Soviet Union." Hence we may expect that the Soviet Union would not allow the admission to the new League of the three states mentioned and it is probable that other states also will refrain from applying for admission since they will not be willing to expose themselves to such a humiliating test.

C. Expulsion from the League.

Like the Covenant of the League of Nations, the Dumbarton Oaks Proposals provide the possibility of expelling a member of the League for having violated the constitution of the League. Whereas Art. 16, par. 4, of the Covenant of the League of Nations confers this power upon the Council, the Dumbarton Oaks Proposals state (Chapter V, Sec. B, par. 3):

The General Assembly should be empowered, upon recommendation of the Security Council, to expel from the Organization any member of the Organization which persistently violates the principles contained in the Charter.

That means that the Security Council will not have the same power as the Council of the League of Nations to expel a member from the League, but that the General Assembly will be in a position to exercise this right only with the consent of the Security Council. If a majority vote of the Security Council must include the vote of all its permanent members, no expulsion will be possible against the will of any such permanent member, even if the state to be expelled from the League is itself one of the permanent members of the Security Council. The decision of the Council of the League of Nations by which a state is declared to be no longer a member of the League, must be concurred in by the representatives of the other members of the League represented in the Council. The representative of the state involved is excluded from voting. It was in this way that the Soviet Union was expelled from the League of Nations. A Great Power, permanent member of the Security Council, would never be exposed to such expulsion from the new League if no decision of the Security Council were possible against the vote of one permanent member.

Expulsion from an international organization the purpose of which is to secure peace among its members is a rather problematical sanction for violating the constitution, for being expelled implies being freed from the obligations imposed upon the members, especially the obligation to refrain from the threat or use of force in international relations (Chapter II, par. 4). It seems, however, that, according to the Dumbarton Oaks Proposals a state, even after having been expelled from the League, cannot escape from the preventive or enforcement actions which may be undertaken by the

According to the wording of Art. 16, par. 4, of the Covenant the representatives of all members of the League represented on the Council, except the member to be expelled, must concur in the decision of the Council by which a state is declared to be no longer a member of the League. At the meeting in which the Soviet Union was expelled from the League the representatives of two members of the Council (Iran and Peru) were not present and the representatives of four members (China, Finland, Greece and Yugoslavia) abstained from voting. Hence it is doubtful whether the decision of the Council was in conformity with the Covenant. Cf. the article of Leo Gross, "Was the Soviet Union expelled from the League of Nations?" above, p. 35.

Organization against members which violate their obligations. Chapter II, par. 6 (2) stipulates:

The Organization should ensure that states not members of the Organization act in accordance with these principles [the principles laid down in the Proposals, especially the principle not to use force in their international relations] so far as may be necessary for the maintenance of international peace and security.

This means that the Charter of the new League (an international treaty) will provide that its norms shall be imposed upon states which are not parties to this treaty—a very interesting attempt to establish an exception to one of the fundamental principles of international law, according to which treaty obligations are binding only upon the contracting states. Such an attempt had already been made by the Covenant of the League of Nations, which, in Art. 17, stipulated that in the event of a dispute between a member of the League and a state which is not a member, the Council should invite the non-member state to accept the obligations of membership in the League for the purposes of such disputes, and that in case this state rejected the invitation and resorted to war against the member, the League should apply the sanctions provided by Art. 16 against the non-member state. provision, the Covenant sought to try to extend its effects to non-member states; the provision has, however, never been applied. It remains to be seen whether the similar attempt in the Charter of the new League—should Chapter II, par. 6, of the Proposals become an Article of the Charter—will be successful; that is to say, whether this exception to the autonomy principle of existing international law will be generally recognized as new law.

D. Suspension of rights of membership.

Expulsion from the new League of a member which violates the principles of the Charter seems to be rather superfluous, since the Proposals provide for another measure which has all the advantages of expulsion without its disadvantages, a measure unknown to the Covenant of the League of Nations, and certainly a remarkable improvement on the usual technique of international organizations. According to Chapter V, Sec. B, par. 3,

The General Assembly should, upon recommendation of the Security Council, be empowered to suspend from the exercise of any rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council. The exercise of the rights and privileges thus suspended may be restored by decision of the Security Council.

Suspension from the exercise of rights or privileges of membership is intended by the Dumbarton Oaks Proposals not exactly as a sanction, but as a measure to be applied in case sanctions are executed against a member. It is, however, quite possible to use suspension of the exercise of rights as a sanc-

² Cf. infra, p. 72.

tion instead of expulsion. It would perhaps be worth while to take this into consideration in drafting the Charter.

According to the Covenant of the League of Nations, any member may, after two years' notice of its intention so to do (Art. 1, par. 3), or by signifying its dissent from an amendment which has become binding (Art. 26, par. 2), withdraw from the League. The Proposals of Dumbarton Oaks do not provide the possibility of withdrawing from the Organization. It is to be hoped that this is intentional and that the Charter of the new League will not confer upon the members a right of secession, so that the United Nations may become a permanent League for the maintenance of peace, in the true sense of the term.

II. COUNCIL AND ASSEMBLY

A. The relationship between Security Council and General Assembly.

The General Assembly and the Security Council as proposed by the Dumbarton Oaks conference have essentially the same structure as the Assembly and the Council of the League of Nations. Art. 3, par. 1, of the League Covenant says:

The Assembly shall consist of Representatives of the Members of the League.

Chapter V, Sec. A, of the Dumbarton Oaks Proposals runs as follows:

All members of the Organization should be members of the General Assembly and should have a number of representatives to be specified in the Charter.

Like the Council of the League of Nations (Art. 4 of the Covenant), the Security Council (Chapter VI, Sec. A of the Proposals) is to consist of permanent and non-permanent members, the latter being elected by the Assembly:

• The Security Council should consist of one representative of each of eleven members of the Organization. Representatives of the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Republic of China, and, in due course, France, should have permanent seats. The General Assembly should elect six states to fill the non-permanent seats. These six states should be elected for a term of two years, three retiring each year. They should not be immediately eligible for reelection. In the first election of the non-permanent members three should be chosen by the General Assembly for one-year terms and three for two-year terms.

There is a slight difference in that the Proposals do not contain a provision analogous to Art. 4, par. 2, of the Covenant, authorizing the General Assembly or the Security Council to increase the size of the latter by way of a simple resolution. Such a measure can be taken only by an amendment to the Charter. Totally different, however, is the relationship between the Security Council and the General Assembly of the Dumbarton Oaks Organ-

ization as compared with that between the Council and the Assembly of the League of Nations. The Council and the Assembly of the League of Nations are, at least in principle, coördinated. Apart from some cases where each of them has exclusive competence, and some cases of common competence where their coöperation on an equal footing is necessary, they have a concurrent competence in all matters concerning the action of the League. In these matters both the Council and the Assembly individually and concurrently have power to intervene. According to the suggestions of the Dumbarton Oaks conference the Security Council is evidently to be superior to the General Assembly. Whereas the General Assembly according to Chapter V, Sec. D, par. 1, is to meet only "in regular annual sessions and in such special sessions as occasion may require," the Security Council is to be in permanent session. Chapter VI, Sec. D, par. 1, stipulates:

The Security Council should be so organized as to be able to function continuously and each state member of the Security Council should be permanently represented at the headquarters of the Organization.³

Almost all important functions conferred upon the General Assembly, such as admission of new members, expulsion from the organization, and election of the secretary-general, can be exercised by this body only "upon recommendation of the Security Council." The power of suspending a member from the exercise of rights and privileges of membership, too, can be used by the General Assembly only upon recommendation of the Security Council, but the latter can restore the exercise of the rights and privileges thus suspended without consulting the General Assembly. The most important function of the Organization, the maintenance of international peace and security, is primarily conferred upon the Security Council. According to Chapter V, Sec. B, par. 1, the General Assembly, it is true,

should have the right to consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments; to discuss any questions relating to the maintenance of international peace and security brought before it by any member or members of the Organization or by the Security Council; and to make recommendations with regard to any such principles or questions.

But:

Any such questions on which action is necessary should be referred to the Security Council by the General Assembly either before or after discussion.

³ The permanent representation of the states members of the Security Council at the headquarters of the Organization is an innovation the purpose of which is to keep the Security Council always informed of events that may affect the peace of the world and thus make this agency "more able to act at a moment's notice." See A Commentary on the Dumbarton Oaks Proposals for the Establishment of a General International Organization. Presented by the Secretary of State for Foreign Affairs to Parliament, November, 1944. London, 1944 (Miscellaneous No. 6, 1944), p. 6.—It is not quite clear how the "non-permanent" members of the Security Council can be "permanently" represented at the headquarters of the Organization.

It is expressly stated:

The General Assembly should not on its own initiative make recommendations on any matter relating to the maintenance of international peace and security which is being dealt with by the Security Council.

"In order to ensure prompt and effective action by the Organization" the Security Council, and not the General Assembly, is charged with "primary responsibility for the maintenance of international peace and security" (Chapter VI, Sec. B, par. 1). It is the Security Council, not the General Assembly, which, according to the Dumbarton Oaks Proposals,

should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security.

It is the Security Council, not the General Assembly, which will be empowered "to recommend appropriate procedures or methods" for the adjustment of disputes (Chapter VIII, Sec. A, par. 1, 5). It is the Security Council, not the General Assembly, which will be empowered "to take any measures necessary for the maintenance of international peace and security," should this body deem that a failure to settle a dispute in accordance with the Charter constitutes a threat to the maintenance of international peace and security. It is the Security Council, not the General Assembly, which will be authorized to "determine the existence of any threat to the peace, breach of the peace or act of aggression" and to "make recommendations or decide upon the measures to be taken to maintain or restore peace and security" (Chapter VIII, Sec. B, pars. 1, 2).

There are some functions of minor importance which are within the exclusive competence of the General Assembly, such as electing the non-permanent members of the Security Council and the members of the Economic and Social Council provided for in Chapter IX of the Proposals, apportioning the expenses of the Organization among its members, approving the budgets of the Organization, initiating studies and making recommendations for the purpose of promoting international coöperation in political, economic and social fields and adjusting situations likely to impair the general welfare, and so on. But the overwhelming preponderance of the Security Council is manifest.

B. The power of the Security Council.

The Council of the League of Nations has the general power to make recommendations or proposals, or to give advice to the members of the League. Only exceptionally is it authorized to make a decision binding upon the members of the League. Such decisions require the agreement of all the members of the League represented at the meeting of the Council. If a member of the League is not represented on the Council it must be invited

to send a representative to sit as a member at any meeting of the Council

during the consideration of matters specially affecting the interests of that member of the League (Art. 5, par. 1; Art. 4, par. 5, of the Covenant). According to Chapter VI, Sec. B, par. 4 of the Dumbarton Oaks Proposals,

All members of the Organization should obligate themselves to accept the decisions of the Security Council and to carry them out in accordance with the provisions of the Charter.

It seems to be one of the most characteristic principles of the Charter of the future League that the Security Council shall have the power to adopt decisions binding upon the members of the Organization. Particular mentions of such decisions in the Proposals include the following instances: According to Chapter VIII, Sec. A, par. 3, the Security Council should call upon the members parties to a dispute to settle their dispute in the way there prescribed; in case of failure to settle the dispute the Security Council is authorized, by Chapter VIII, Sec. B, par. 1, to take any measures necessary for the maintenance of international peace and security. Such measures may be taken by a decision binding upon the members. In general, measures to maintain peace and security (including decisions binding upon the members) may be taken, according to Chapter VIII, Sec. B, par. 2, by the Security Council in case of any threat to the peace, breach of the peace, or act of aggression. According to Chapter VIII, Sec. B, par. 5, the Security Council is authorized to call upon the members of the Organization to make available to the Security Council armed forces, facilities, and assistance necessary for the purpose of maintaining international peace and security. Within the limits of agreements concluded among the members the Security Council is authorized by Chapter III, Sec. B, par. 6, to determine the strength and degree of readiness of national air force contingents held available by the members for the purpose of urgent military measures to be taken by the Organization (i.e., the Security Council).

Chapter VIII, Sec. B, par. 7 expressly stipulates

The action required to carry out the decisions of the Security Council for the maintenance of international peace and security should be taken by all the members of the Organization in coöperation or by some of them as the Security Council may determine.

This means that a decision of the Security Council is binding also upon members not represented on the Security Council. According to Art. 4, par. 5, of the Covenant of the League of Nations, as already noted,

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

In case of a dispute the votes of the Representatives of the parties are not

counted (according to Art. 15, pars. 6 and 7, of the Covenant). Chapter VI, Sec. D, pars. 4 and 5 of the Dumbarton Oaks Proposals stipulate that

Any member of the Organization should participate in the discussion of any question brought before the Security Council whenever the Security Council considers that the interests of that member of the Organization are specially affected.

Any member of the Organization not having a seat on the Security Council and any state not a member of the Organization, if it is a party to a dispute under consideration by the Security Council, should be invited to participate in the discussion relating to the dispute.

Here the case of a dispute is expressly distinguished from other questions brought before the Security Council. But the difference between the treatment of disputes and the handling of other questions is not the same as that made by the Covenant of the League of Nations. When the question brought before the Security Council is not a dispute, only members of the Organization are to participate in the discussion; but when it is a dispute, the parties concerned, even though they are non-members of the Organization, are to be invited to participate in the discussion.

It is doubtful whether, according to the Covenant of the League of Nations, non-member states, parties to a dispute under consideration by the Council, have the same rights as member states. Art. 17, par. 1, of the Covenant stipulates:

In the event of a dispute between a Member of the League and a state which is not a Member of the League, or between states not Members of the League, the state or states not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just.

According to the wording of this provision the non-member state must only submit to the obligations which are incumbent on a member, and need not be given the benefit of the corresponding rights, in particular the right of being invited to send a representative to sit as a member of the Council at the meetings in which the latter deals with the dispute. In practice, however, it has been realized that in case of dispute between a member and a non-member state, or between two non-member states, there could be no question of imposing on the non-member the obligations of a member without giving him the corresponding rights. On this point the Dumbarton Oaks Proposals constitute a textual improvement. They expressly say that in case of a dispute under consideration by the Security Council the member of the Organization not having a seat on the Security Council and the state not a member of the Organization "should be invited to participate in the discussion relating to the dispute." In case the question is not a dispute, the wording is different. It is simply said that the member of the Organization "should participate in the discussion." "Invitation"—the formula used by

the Covenant of the League of Nations—is provided only in the case of dispute, although such invitation is necessary also when the matter under consideration is not a dispute, since without being invited the member cannot participate in the discussion of the Security Council. When it is not the question of a dispute, the member is to participate in the discussion only if "the Security Council considers that the interests of that member of the Organization are specially affected." Admission of the member to the discussion of the Security Council thus depends on the discretion of the latter. In case of dispute, however, invitation of the member and non-member is obligatory, and the Security council is not to consider whether the interests of the parties concerned are specially affected. Art. 4, par. 5, of the Covenant of the League of Nations does not distinguish between disputes and other questions and does not make the invitation of the member expressly dependent on a consideration of the Council that the interests of the member are specially affected. It merely provides that the member shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that member. However, the question as to whether the interests of the member are specially affected can be decided only by the Council. Hence the invitation of the member depends here too on a consideration of the Council. At this point also the wording of the Dumbarton Oaks Proposals is certainly more precise than that of the Covenant of the League of Nations.

It seems that there is a still more important difference between the two instruments. According to Art. 4, par. 5, of the Covenant, the member of the League invited by the Council has a right "to sit as a member" at the meetings of the Council, that is to say, to participate in the considerations of the Council with all the rights and duties of a member of the Council. means that the member of the League invited by the Council has the right to participate even in the voting. It is excluded from voting (that is to say, its vote is not counted) only in case the matter affecting its interests is a dispute. According to Chapter VI, Sec. D, pars. 4 and 5, of the Dumbarton Oaks Proposals, the member should participate only "in the discussion" of the question affecting its interests or "in the discussion relating to the dispute." The words used in Art. 4, par. 5, of the Covenant "to sit as a member", meaning to participate with the full rights of a member of the Council, are This and the replacement of the term "consideration" by "discussion" seems to indicate that the member (and, in case of par. 5, also the non-member) are to have no right to participate in the voting. According to the Covenant the member is excluded from voting only in the case of dispute, and not in other questions to be decided by the Council. cisions are possible only with the consent of the member of the League invited according to Art. 4, par. 5, to sit as a member of the Council. This means that action of the Council is possible on the basis of an agreement with the member of the League whose interests are affected. The Dumbarton Oaks Proposals reserve the right of voting in all cases, not only in cases of dispute,

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to the regular members of the Security Council, and deny voting power to the states which are only invited to participate in the discussions of the Security Council according to Chapter VI, Sec. D, pars. 4 and 5. This arrangement seems to be intended as a step forward, since it means that the Security Council is meant to be an effective international government placed above the members of the Organization.

The advantage which certainly would be gained by conferring upon the Security Council such strong authority may, however, be counterbalanced or at least seriously prejudiced by the fact that the right of voting in the procedure of the Security Council—a right denied to non-members of this agency, whose interests are affected by its decisions even if no dispute is under its consideration—can be exercised by any member of the Security Council, even if this member is involved in a dispute to be settled by that Council. The provision of Art. 15, pars. 6 and 7, of the Covenant of the League, according to which the votes of the parties to the dispute (whether represented on the Council as its regular members or invited in accordance with Art. 4, par. 5) were not to be counted, has not been taken over by the Dumbarton Oaks Proposals. But this does not mean that the Charter finally to be adopted will conform in this point with the Proposals. The voting procedure in the Security Council is, as pointed out, still under consideration.

There can be little doubt that the position of the Security Council as suggested by the Dumbarton Oaks conference is hardly compatible with the principle of the "sovereign equality of all peace-loving states," an expression which refers particularly to all the members of the Organization. The Covenant of the League of Nations, which does not, as the Dumbarton Oaks Proposals (in Chapter II, par. 1) solemnly do, proclaim this principle, is certainly much more in conformity with it. This, however, is exactly the reason why the old League was much less effective than the new League will be if the Proposals should be realized.

The principle of the sovereign equality of the member states is particularly maintained in the Covenant of the League of Nations by the rule already mentioned that the decisions of the Assembly as well as of the Council require unanimity. With respect to the General Assembly, Chapter V, Sec. C of the Dumbarton Oaks Proposals stipulates that each member of the Organization should have one vote. Important decisions should be made by a two-thirds majority of those present and voting. On other questions the decisions of the General Assembly should be made by a simple majority vote. This, too, is a gratifying progress achieved by the Dumbarton Oaks conversations in restricting the principle of sovereign equality.

This principle is completely dropped by the provision of Chapter XI concerning amendments, which runs as follows:

⁴ Except if this principle is interpreted as "the equal right of all States to the maintenance of their political independence." This is the interpretation of the British Commentary on the Dumbarton Oaks Proposals, p. 5. See also note 17, p. 83.

Amendments should come into force for all members of the Organization, when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the members of the Organization having permanent membership on the Security Council and by a majority of the other members of the Organization.

No amendment is possible against the vote of one of the Great Powers, permanent members of the Security Council, but it is quite possible against any other member belonging to the minority of states which refuse to ratify the This is of importance since the Proposals do not allow a memamendment. ber—as Art. 26 of the League Covenant does—to withdraw from the League when the member signifies its dissent from the amendment. that Article an amendment to the Covenant takes effect when ratified by the members of the League whose representatives compose the Council and a majority of the members of the League whose representatives compose the The decisive difference between the Covenant of the League of Nations and the Dumbarton Oaks Proposal consists in that the former grants to any member—and thus also to the non-permanent members—of the Council the right of veto against amendments; whereas the Dumbarton Oaks Proposals grant this right only to the permanent members of the Security Council, thus establishing an important privilege of the great powers.

As has been pointed out, the question of voting procedure in the Security · Council is still under consideration. It is to be hoped that finally the majority vote principle will be accepted for the procedure of this body as well, and that it will be possible to avoid a solution of this delicate problem which can hardly be considered to be better than the unanimity principle—namely, the rule that the majority must include the votes of all permanent members of the Security Council. This would mean, as pointed out, that each of the Great Powers in its capacity as permanent member of the Security Council has a right of veto against any decision of the Security Council. Such a voting procedure would render the activity of this agency no less difficult than does the principle of unanimity, and it is even more objectionable in that it manifests the privileged position of the Great Powers in a way hardly acceptable to the others. On the other hand, there can be little doubt that it is not possible to apply the majority vote principle, acceptable for the procedure of the General Assembly because of its politically subordinate importance, to the procedure of a body which has such a highly political character as the Security Council, and in which Great Powers of the size of the Soviet Union, the United States, or Great Britain are represented together with small powers such as Czechoslovakia or Colombia. If each member of the Security Council should have only one vote, then the principle of a simple, and even of a qualified, majority could hardly be considered as adequate. If the burden of responsibility for the maintenance of peace and order rests in the first place, and almost exclusively, upon the Great Powers as members of Security Council, it is quite understandable and perhaps even justifiable that none of the Great Powers will allow itself to be outvoted by a majority of small powers or a majority within which small powers have a decisive part. Such outvoting is quite possible if the Security Council, as Chapter VI, Sec. A, suggests, should consist of one representative of each of eleven members of the Organization of which five (Great Powers) should have permanent, and six (small Powers) non-permanent seats. In order to make the majority vote principle applicable to the procedure of the Security Council, it might be advisable to grant to each of the permanent members of the Security Council a weighted vote. The number of votes which could be cast by each of these Powers should be in a certain proportion to the number of their subjects and their military and economic potentiality. For instance: United States, Great Britain, Soviet Union, might each cast three votes; China and France, each two votes. If, however, such a scheme should prove impossible and each member of the Security Council should have only one vote, the majority necessary for a valid decision of the Security Council should include the votes of at least three permanent and three (or more) non-permanent members. In this case the Security Council could not act against the votes of two permanent members.

III. SETTLEMENT OF DISPUTES

A. Court and Council (justiciable and non-justiciable disputes).

From a legal point of view an international organization for the maintenance of peace has to fulfill three tasks: to oblige its members to settle their disputes in a peaceful way and to establish a procedure for the peaceful settlement of all disputes; to guarantee the execution of the decisions by which the disputes are settled; and to provide sanctions against members which, failing to settle their disputes peacefully, employ force against other members. The Covenant of the League of Nations has not fulfilled these tasks in a satisfactory way. Its provisions on these points are based on the very problematical distinction between legal disputes, *i.e.* disputes suitable for submission to settlement by an international tribunal (so-called justiciable disputes), and political disputes, *i.e.* disputes not suitable for submission to settlement by an international tribunal.⁵ Art. 13, par. 2, defines the legal disputes as follows:

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

⁵ For further discussion of this question see Kelsen, H., *Peace Through Law*, Chapel Hill, 1944, pp. 23 ff.

The original intention was to oblige the members of the League to submit disputes of this kind to the Permanent Court of International Justice or a special international tribunal competent to settle the disputes by applying positive law, and to submit other disputes—so-called political conflicts—to the Council as a political agency authorized to settle the disputes according to political considerations.

However, the Covenant did not realize this idea. According to the wording of the Articles concerned (Art. 12-15), disputes between Members of the League are to be submitted to an international tribunal only if both parties to the dispute agree. In case no such agreement can be reached, the Council becomes competent to settle the dispute whether or not it has a legal or a political character, that is to say, whether or not it is one of the disputes enumerated in Art. 13, par. 2, if one party submits this dispute to the Coun-Thus a political agency applying political principles is authorized to settle not only political but also legal disputes. This is the first weakness of the Covenant with respect to the settlement of disputes. The second is that the procedure of the Council gives no guarantee that all disputes submitted to this agency can be settled, since the Council works only if it reaches a unanimous decision. If no unanimous decision is reached, the parties are allowed to settle their dispute by the employment of force. But even if the Council reaches a unanimous decision, the dispute is not completely The Council's decision is merely a "recommendation," and not The only effect of a unanimous recommendation of binding upon the parties. the Council is that the members of the League must not go to war with any party to the dispute which complies with the recommendation of the Council.

Chapter VIII, Sec. A, of the Dumbarton Oaks Proposals, which deals with the pacific settlement of disputes, maintains the dubious distinction between justiciable and non-justiciable disputes. Par. 6 stipulates:

Justiciable disputes should normally be referred to the international court of justice.

Such a court should be established as "the principal judicial organ of the Organization" (Chapter VII, par. 1). But submission of justiciable disputes to the international court of justice is not obligatory. Chapter VIII, Sec. A, par. 3, says:

The parties to any disputes [including justiciable disputes] the continuance of which is likely to endanger the maintenance of international peace and security should obligate themselves, first of all, to seek a solution by negotiation, mediation, conciliation, arbitration or judicial settlement, or other peaceful means of their own choice. The Security Council should call upon the parties to settle their dispute by such means.

According to the Covenant of the League of Nations the parties to a dispute are not "obligated" "to seek a solution" by "peaceful means of their own choice," and the Council is not authorized to "call upon the parties to settle their dispute by such means." It seems that the Dumbarton Oaks Proposals,

in contradistinction to the Covenant, confer upon the Council as a primary function the power to exercise upon the parties a pressure in the direction of settling the dispute by themselves or through an agency other than the Security Council.⁶ The sentence "The Security Council should call upon the parties to settle their dispute by such means," is not very clear. It may be interpreted in the sense that the Security Council should have power to issue a decree binding the parties to settle their dispute by one of the means mentioned in the previous sentence of the paragraph, especially to submit it to an international tribunal, in particular to the international court of justice. This would imply that the Security Council is to be given power to decide whether a dispute is justiciable or not. This interpretation may be supported by the wording of Chapter VIII, Sec. A, par. 1:

The Security Council should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security.

The Security Council would apparently have the right to interfere with any dispute whatever and to declare it as dangerous to international peace. This is necessary if the Security Council is to possess the power to oblige the parties to such a dispute to settle it in the way determined in par. 3, especially to submit it to an international tribunal. This interpretation is also confirmed by the provision of Chapter VIII, Sec. B, par. 1, according to which the Security Council is authorized to take the measures necessary for the maintenance of international peace and security—even coercive action—in case the parties to a dispute fail to settle it in accordance with the forms of procedure indicated in Chapter VIII, Sec. A, par. 3. This presupposes that the provision of par. 3 regarding the settlement of the dispute, by the means designated there, has a compulsory character; which is possible only if the Security Council by "calling upon the parties to settle their dispute by such means" creates a legal duty for the parties, sanctioned by the provision of Chapter VIII, Sec. B, par. 1.

If this interpretation of the provision that the Security Council should have the power to call upon the parties to settle their dispute by peaceful means and especially by submitting it to an international tribunal, is correct, the procedure of settling disputes suggested by the Dumbarton Oaks con-

⁶ Mr. Leo Pasvolsky, Special Assistant to the Secretary of State, said in an address on the Dumbarton Oaks Proposals delivered at the closing session of the United Nations Institute on Post-War Security at Cincinnati on Nov. 18, 1944 (Department of State Bulletin, Vol. XI, No. 285, p. 705): "The responsibility for the settlement or adjustment of international disputes or of situations likely to lead to disputes would be placed, first of all, upon the nations directly involved. It is proposed that all member states should assume the responsibility of doing everything in their power to settle their disputes peacefully, by means of their own choice. . . . The purpose of all this would be to keep the Security Council from being snowed under by all sorts of disputes and difficulties which can and should be handled without reference to it. The Council itself would, under the proposals, be constantly on the watch and would appeal to the nations to settle disputes by means of their own choice."

ference would constitute a remarkable progress as compared with the analogous procedure of the Covenant of the League of Nations. It would signify a certain approximation to the idea of compulsory adjudication of disputes.

However, the interpretation just offered seems to be not quite consistent with the first sentence of Chapter VIII, Sec. A, par. 4, which runs as follows:

If, nevertheless, parties to a dispute of the nature referred to in paragraph 3 above fail to settle it by the means indicated in that paragraph, they should obligate themselves to refer it to the Security Council.

That seems to indicate that settlement of a dispute by the means mentioned in paragraph 3, especially submission to the decision of an international tribunal (the international court of justice included), is not obligatory and that, if there is no agreement of the parties to the dispute in this respect, the Security Council becomes competent, whatever the character of the dispute may be: justiciable or not justiciable. It is, however, possible to interpret the first sentence of Chapter VIII, Sec. A, par. 4 as follows: In case of failure to settle the dispute by negotiation, mediation, conciliation, arbitration, judicial settlement, or other peaceful means of their own choice—the means mentioned in paragraph 3—the parties are obliged to refer the dispute to the Security Council, unless the Security Council has called upon them to settle their dispute by submitting it to an international tribunal. If they do not comply with this call of the Security Council, they are not allowed to refer the dispute to the latter. Noncompliance with the call of the Security Council constitutes a violation of a duty imposed upon them by Chapter VI, Sec. B, par. 4,—a delict which entails one of the sanctions provided for in Chapter VIII, Sec. B, par. 1 seq.

According to Art. 15, pars. 9 and 10, of the Covenant of the League of Nations a dispute submitted to the Council may be referred by the latter on its own initiative or at the request of a party to the Assembly, which is authorized to settle the dispute in the same way as the Council. In applying the provisions of Chapter V, Sec. B, par. 1, of the Proposals, quoted above, any party may bring a dispute in which it is involved before the General Assembly. The latter is authorized to "discuss" it and "to make recommendations." But if it is a question "on which action is necessary" the General Assembly is not allowed to make recommendations but must refer the dispute to the Security Council.

It is not clear what is meant by the words "action is necessary": action implying a settlement of the dispute or action implying sanctions (enforcement action)? Further, which agency is authorized to answer the question as to whether "action is necessary," the General Assembly or the Security Council? To allow the General Assembly to discuss a dispute and to make recommendations but to shift jurisdiction in a case, after it has been discussed in this body, to the Security Council if "action is necessary," is a procedure of doubtful value. If the General Assembly has no power to settle disputes, it should have no power at all to deal with them.

With the exception of the case where the Security Council calls upon the parties to submit their dispute to an international tribunal, arbitration or judicial dicision of a dispute will take place according to the Dumbarton Oaks Proposals—as according to the Covenant of the League of Nations only if both parties to the dispute agree. If such agreement cannot be reached the Security Council, a political agency, may become competent like the Council of the League of Nations, to settle the dispute, even if it has a purely legal character. That the Security Council may be in a position to settle a legal dispute presupposes that the concept of legal dispute is objectively determined as by Art. 13, par. 2, of the Covenant of the League of Nations. The Dumbarton Oaks Proposals do not contain any such determination. When the constitution of the international organization does not determine the concept of the legal dispute according to an objective criterion, and legal disputes are supposed to be disputes in which both parties base their claims on positive law—in contradistinction to a political dispute in which at least one party bases its claims on other norms than positive law, or on no norms at all—then legal disputes are mostly those which the parties agree to submit to the decision of an international tribunal; then the Security Council may, as a rule, settle only political disputes. Of course it is not excluded that a state bases its claims on positive law and, nevertheless, refuses to submit the dispute to an international tribunal. But this is not very likely to happen when the jurisdiction of an international tribunal can be avoided only by declaring the dispute a political one, that is to say, by basing one's claims on something other than positive law.

If the Charter of the new League will follow the example of the Covenant of the League of Nations with respect to the legal definition of justiciable disputes, it is quite possible that the Security Council—like the Council of the League of Nations—will be competent to settle disputes which are according to the legal definition justiciable, but which both parties, or one party, fail to submit to the decision of an international tribunal. But the Security Council, if our interpretation of the Dumbarton Oaks Proposals is correct, has the power to compel the parties to submit their dispute to an international tribunal if it considers the dispute to be justiciable. Such an extraordinary power was not conferred upon the Council of the League of Nations.

B. Complete or incomplete settlement of disputes.

In another respect too, the Dumbarton Oaks program seems to suggest a remarkable departure from the Covenant of the League of Nations. In case a dispute is referred to the Security Council according to Chapter VIII, Sec. A, par. 4,

The Security Council should in each case decide whether or not the continuance of the particular dispute is in fact likely to endanger the maintenance of international peace and security, and, accordingly, whether the Security Council should deal with the dispute, and, if so, whether it should take action under paragraph 5.

Paragraph 5 states:

The Security Council should be empowered, at any stage of a dispute of the nature referred to in paragraph 3 above, to recommend appropriate procedures or methods of adjustment.

This seems to mean that the Security Council has the power to assume jurisdiction over a dispute even if it is before another authority, courts not excluded. If this interpretation is correct a rather far-reaching power is conferred upon the Security Council, especially in case the dispute has a legal character.

It is, however, not quite clear what is meant by the words "to recommend appropriate procedures or methods of adjustment." In paragraph 1 of Chapter I a distinction is made between "adjustment" and "settlement" of international disputes. One of the purposes of the Organization is determined by the formula: "to bring about by peaceful means adjustment or settlement of international disputes." What is the difference between "adjustment" and "settlement"? In colloquial language, both terms are used interchangeably, and the heading of Chapter VIII, Sec. A is "Pacific Settlement of International Disputes." "Adjustment" is not mentioned, so that the term "adjustment" in paragraph 5 of that section may be understood as implying "settlement." It is, however, not only the term "adjustment" which renders the meaning of paragraph 5 uncertain. According to its wording, the Security Council is not only not authorized to "settle" the disputes referred to it under paragraph 4; the Security Council should be empowered to recommend only appropriate "procedures or methods" of adjustment. If this phrase is to be taken literally the Security Council is authorized only to recommend a way for the settlement of the dispute, that is to say, rules of procedure; its jurisdiction is restricted to measures of adjective, not of substantive, law. This is not consistent with paragraph 3 of the same Chapter and Section where the Security Council is already authorized to recommend methods or procedures of adjustment. For a recommendation of such kind is certainly included in the authorization of paragraph 3 "to call upon the parties to settle their dispute by such means," that is to say, by the procedures designated in that paragraph: negotiation, mediation, conciliation, arbitration or judicial settlement. These are, as a matter of fact, all possible "procedures or methods" of adjustment or settlement of disputes. It is only in case the parties fail to apply these procedures or methods that paragraph 5 becomes applicable. Consequently the meaning of this paragraph can hardly be that, after the parties to a dispute have failed to apply certain procedures or methods and are therefore obliged to refer their dispute to the Security Council, the latter shall have the powernot to settle the dispute, but to recommend just the same procedures or methods which the parties have failed to apply.

Such an interpretation of paragraph 5 is inconsistent with paragraph 6 according to which the Security Council is empowered to refer to the court,

for advice, legal questions connected with non-justiciable disputes, which presupposes that the Security Council has to settle such disputes. It is inconsistent with paragraph 7 according to which disputes arising out of matters that are within the domestic jurisdiction of the state concerned, are excluded from the jurisdiction of the Security Council, which presupposes that disputes are except in case of domestic jurisdiction—under the jurisdiction of the Security Council; and this means that the Security Council has the power to settle disputes which do not arise out of matter solely within domestic jurisdiction of the state concerned. A literal interpretation of the phrase "appropriate procedures or methods of adjustment" is, finally, inconsistent with Chapter VIII, Sec. B, par. 1 where the Security Council is authorized to apply sanctions in case the parties fail to settle a dispute "in accordance with its recommendations made under paragraph 5 of Section A," which presupposes that the recommendation made is a recommendation for the settlement of the dispute; otherwise the words "or in accordance with its recommendations made under paragraph 5 of Section A" were superfluous, since the immediately preceding words "failure to settle a dispute in accordance with procedures indicated in paragraph 3 of Section A" would refer to the same case. If the Council has, by Chapter VIII, Sec. A, par. 5, no power to settle a dispute according to par. 3, and if failure so to settle a dispute is a condition for enforcement action under Sec. B, then the question arises against whom this action is to be directed. How is such action possible without prior decision as to which party is right? And how is such a decision possible without deciding the merits of the case, without a decision "settling" the dispute? All these inconsistencies allow the assumption that paragraph 5, in spite of its unprecise wording, authorizes the Council to settle the disputes which the parties are obliged to refer to it, and that in the draft of the future Charter the wording will be corrected. If it were intended not to confer upon the Council the right to "settle" disputes which have not been settled in another way, the Dumbarton Oaks Proposals would here be a regrettable setback as compared with Article 15 of the Covenant of the League of Nations.7

⁷ Mr. Durward V. Sandifer, Acting Chief, Division of International Security and Organization, Department of State, said in an address on the Dumbarton Oaks Proposals delivered before the Federal Bar Association at Washington on Dec. 8, 1944 (Department of State Bulletin, Vol. XI, No. 285, pp. 711 ft.): "The Security Council . . . would not itself be a primary agency for the settlement of disputes. Its function would be to encourage settlement by the parties through peaceful means of their own choice, to recommend procedures and methods of settlement when the parties have failed to reach a settlement, and to keep constant vigil that failure to settle a dispute does not threaten the peace." But he said also: "If the parties failed to effect a settlement by these methods they would be obligated to refer the dispute to the Security Council." For what purpose should an unsettled dispute be referred to the Security Council? For the same purpose for which, according to Chapter VIII, Sec. A, par. 6, justiciable disputes should be "referred" to the international court of justice: to be settled by the authority to which the parties are obliged to refer the dispute.

According to Chapter VIII, Sec. B, par. 1, quoted above, the Security Council should "take any measures necessary for the maintenance of international peace and security" if the parties to the dispute fail to settle the dispute in accordance with procedures indicated in paragraph 3 of section A, or in accordance with its recommendations made under paragraph 5 of sec-The measures to be taken for the maintenance of peace and security are true sanctions. They are characterized by paragraphs 3 and 4 of section B as diplomatic, economic or other measures not involving the use of armed force, and action by air, naval, and land forces. If recommendation of "appropriate procedures or methods of adjustment" (par. 5 of Sec. A) implies recommendations for the settlement of disputes, and if failure to settle a dispute in accordance with such recommendations is made—in paragraph 1 of section B—the condition of a sanction, the settlement of disputes according to paragraph 5 of section A has, in spite of the wording of paragraph 5, not necessarily the character of a mere "recommendation" in the true sense of the term. For a recommendation which can be enforced by the measures determined in Chapter VIII, Sec. B, pars. 1-11, is a decision binding upon the parties to the dispute.

It must be noticed, however, that the Security Council is not legally bound to apply sanctions in case the parties to the dispute do not comply with its recommendations or fail to settle a dispute in accordance with procedures indicated in paragraph 3 of Section A, especially in accordance with a call of the Security Council to settle their dispute by such means. The Security Council—says paragraph 1 of Section B—should take measures necessary for the maintenance of international peace and security only if it should deem that a failure to settle a dispute in accordance with procedures indicated in paragraph 3, or in accordance with its recommendations "constitutes a threat to the maintenance of international peace and security." Since the existence of this condition must be ascertained by the Security Council the effect of the formula is that the application of sanctions is left to the discretion of the Security Council—a further strengthening of its power.

If this interpretation of Chapter VIII, Sections A and B, is correct, the procedure for the settlement of disputes by the Security Council suggested at Dumbarton Oaks is much more effective than the analogous procedure of the Covenant of the League of Nations. In contradistinction to the latter, the former may lead to a complete settlement of the dispute through an enforceable decision of the Security Council, which is not the case in the procedure before the Council of the League of Nations.

C. Settlement of all disputes.

One of the most striking advantages of the Dumbarton Oaks Proposals compared with the League Covenant consists in the fact that according to the latter there are cases in which the parties to a dispute are not forbidden to resort to war against each other; whereas, according to the former, the employment of force is completely excluded from the mutual relation of the

individual members. According to Art. 15, pars. 6 and 7 of the Covenant of the League of Nations, war is allowed if the Council cannot reach a unanimous recommendation or if the unanimous recommendation of the Council is not complied with by both parties to the dispute. This is excluded by the Proposals of the Dumbarton Oaks conference. Chapter II, par. 3, states:

All members of the Organization shall settle their disputes by peaceful means in such a manner that international peace and security are not endangered.

and par. 4 says:

All members of the Organization shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organization.

Use of force consistent with the purposes of the Organization is only and exclusively an action performed by a member of the Organization at the call of the Security Council for the maintenance of peace and security according to Chapter VI, Sec. B, par. 4, and Chapter VIII, Sec. B, par. 1–11. The employment of force is allowed only as a collective action for the realization of the purposes of the Organization. At this point the Dumbarton Oaks Proposals are accommodated to the provisions of the Kellogg Pact. In case our interpretation of Chapter VIII, Sec. A and especially of its paragraph 5 is correct, any dispute, if not settled by means indicated in paragraph 3, can—in principle—be settled by the Security Council.

D. Voting procedure in the Security Council.

The question whether the procedure of the Security Council guarantees the settlement of all disputes brought before this agency depends—except as to one point of which we shall speak later—on the voting procedure which will be finally accepted. It is to be hoped that the majority vote principle in one or the other form will be accepted. But it should be emphasized that all the progress which the Proposals of the Dumbarton Oaks conference imply would be paralyzed by a voting procedure by which a right-of veto is granted to each of the permanent members of the Security Council. same holds good of the attempt to allow a permanent member of the Security Council to participate in the deliberation and decision of the Security Council in case this member is involved in a dispute. The principle that nobody should be judge in his own case, accepted by the Covenant of the League of Nations in the rule that, in case the Council settles a dispute, the votes of the representatives of members parties to a dispute must not be counted, can hardly be rejected by the Charter of the new League without seriously endangering its authority in the public opinion of the world; especially if only the Great, not the small, Powers should have the privilege of being judges in their own case. A right of veto for the Great Powers in their own cases means practically that a dispute in which a Great Power is involved can be settled, if at all, only by diplomatic methods, and this means that the whole machinery of the international organization is put aside in case of the most dangerous conflicts.

The reason why it is so difficult to apply to the voting procedure in the Security Council the principle that nobody should be judge in his own case a principle generally accepted for the procedure of a court—is the fact that the Security Council is exactly the contrary of a court, but a political agency whose actions will be determined only by political considerations, not by rules of law. It is quite understandable that a Great Power does not wish to be excluded from the decision of the Security Council in its own case when this decision is determined by purely political considerations, which means according to the interests of the states participating in the decision. root of the evil is that a political agency such as the Security Council is not the proper organ for the settlement of disputes, at least not for the settlement of so-called justiciable disputes (if this distinction can be maintained at all). The difficulty created by the conflict in the question of voting procedure in the Security Council could, perhaps, be overcome by restricting the jurisdiction of the Security Council in the field of settling disputes and by conferring upon the international court of justice compulsory jurisdiction at least for justiciable (legal) disputes, leaving to the court the competence of deciding the question as to whether a certain dispute has a legal or a political character. Chapter VIII, Sec. A, par. 6, of the Dumbarton Oaks Proposals expressly stipulates: "Justiciable disputes should normally be referred to the international court of justice." 8 This principle should be formulated in the future charter as follows: "If a dispute should arise between members of the Organization any party to the dispute may submit the matter to the international court of justice. The court is competent to decide the dispute if the court considers the dispute to be justiciable." To make the international court of justice really "the principal judicial organ of the Organization" is all the more important as the Proposals do not provide any procedure for the peaceful change of the existing international law. Where there is no legislator only a court with—at least limited—compulsory jurisdiction can fulfill the function of adapting the law to changing circumstances. 10

If the Security Council has only the power to settle purely political dis-

⁸ The British Commentary on the Dumbarton Oaks Proposals, p. 7, says: "The word 'normally' is inserted because a particular dispute, even though justiciable in character, might be more appropriately dealt with by other means, such as reference to the Security Council; moreover it is always open to the parties to agree on a reference to some other tribunal."

⁹ Such a provision would conform with the declaration which Secretary of State Hull made in his speech of September 12, 1943: "Political differences which present a threat to the peace of the world should be submitted to agencies which would use the remedies of discussion, negotiation, conciliation, and good offices. Disputes of a legal character which present a threat to the peace of the world should be adjudicated by an international court of justice whose decisions would be based upon application of principles of law."

¹⁰ For further discussion of this question see Kelsen, H., Peace Through Law, pp. 19 ff.

putes, a right of veto of a Great Power in its own case is less objectionable than if the Council is to settle legal disputes. The right of veto of a Great Power in case of a political dispute to which it is a party amounts to the principle that a political dispute in which a Great Power is involved can be settled only by an agreement with this Power. This is not an ideal solution of the problem concerned, but it is certainly not as objectionable as the refusal to apply to the settlement of legal disputes by the Security Council the principle that nobody should be judge in his own case, and to grant to a party to a legal dispute a right of veto against the decision.

E. The "domestic jurisdiction" clause.

Among the provisions concerning the settlement of disputes by the Security Council there is one that has been taken over literally from Art. 15, par. 8, of the Covenant of the League of Nations. This is Chapter VIII, Sec. A, par. 7, according to which the Security Council is not competent to settle a dispute arising out of a matter which by international law is solely within the domestic jurisdiction of the state concerned. If this provision should be inserted into the Charter disputes could arise between members which could not be settled by the Security Council and which, since no other authority would have compulsory jurisdiction over them, would not necessarily be settled at all. The formula "disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned" has been discussed very much since it was inserted in the Covenant of the League of Nations, with the result that it has been almost generally rejected. The decisive objection against this formula is that a matter is by international law solely within the domestic jurisdiction of a state only if there is no rule of customary or conventional international law by which the state concerned is obliged to behave in a certain way with respect to that matter, and this means that the state is legally (i.e. "by international law") free to behave as it pleases. Under such circumstances its opponent in the dispute has no right to make any claim whatever in the Hence when it is officially recognized that a dispute arises out of a matter which is solely within the domestic jurisdiction of one of the parties to the dispute it is recognized at the same time that the dispute is a legal dispute and that the state within whose domestic jurisdiction the matter lies is right whereas its opponent is wrong. Since the question as to whether a dispute has arisen out of a matter which is solely within the domestic jurisdiction of the state concerned must be answered in an authoritative way it is inevitable that the Security Council should be authorized to decide the question, just as the Council of the League is authorized by Art. 15, par. 8, to give the decisive answer. But to answer the question in the affirmative amounts, as pointed out, to the statement that the party within whose domestic jurisdiction the matter belongs, is right in rejecting the claim of the other party, and that the latter is wrong.¹¹ This is the reason why it is

¹¹ For further discussion see Kelsen, Peace Through Law, Chapel Hill, 1944, p. 33.

absurd not to allow the Security Council just in such a case to settle the dispute, without establishing compulsory jurisdiction of an international tribunal. In view of the legal character of the dispute a court would certainly be the appropriate authority to settle the dispute. It is to be hoped that paragraph 7 of section A will not become an Article of the Charter.

IV. THE COURT

Chapter VII of the Dumbarton Oaks Proposals deals with the Court. Paragraph 1 says:

There should be an international court of justice which should constitute the principal judicial organ of the Organization.

But this is not quite in accordance with other provisions of the Proposals. Like the members of the League of Nations, the members of the Dumbarton Oaks Organization are not obliged to submit all their disputes, even their legal disputes, to the international court of justice. They are free to submit all disputes, including legal disputes, to other authorities, especially to other international tribunals. The jurisdiction of the future international court of justice—like that of the Permanent Court of International Justice—is not to be obligatory for the members; the court is only to be open to them; they may appeal to it if they like, but they are not obliged to do so. diction of the Security Council concerning the settlement of disputes, however, is compulsory, at least under certain circumstances. This agency, according to the wording of the Proposals, in spite of its political character, seems to be in reality "the principal judicial organ of the Organization" despite the statement that such position belongs to the international court of justice. Just as the Permanent Court of International Justice may give advisory opinions on any dispute or question referred to it by the Council or Assembly of the League of Nations, so the Security Council, though not the General Assembly, according to Chapter VIII, Sec. A, par. 6, should be empowered to refer legal questions connected with non-justiciable disputes to the international court of justice for advice. This restriction to nonjusticiable disputes is not quite consistent with the fact that the Security Council may be in a position to deal also with justiciable disputes.

Whereas the Protocol to which the Statute of the Permanent Court of International Justice is annexed is an international treaty different from the Covenant of the League of Nations (Part I of the Peace Treaties of Versailles, St. Germain, Trianon, Neuilly), paragraph 2 of Chapter VII of the Proposals stipulates:

The court should be constituted and should function in accordance with a statute which should be annexed to and be a part of the Charter of the Organization.

This is, from the point of view of legal technique, a better solution of the problem than that given by Art. 14 of the Covenant. Paragraph 3 of Chapter VII of the Proposals says:

The statute of the court of international justice should be either (a) the Statute of the Permanent Court of International Justice, continued in force with such modifications as may be desirable or (b) a new statute in the preparation of which the Statute of the Permanent Court of International Justice should be used as a basis.

Of the two propositions of this alternative the first is hardly practicable. The Protocol of December 16, 1920, to which the Statute of the Permanent Court of International Justice is annexed, is an international treaty not identical with the Charter of the new League, of which the statute of the international court of justice is to be a part. The treaty containing the Charter will not be concluded by the same states which have concluded the treaty containing the Statute. The Statute of the Permanent Court of International Justice could become a part of the Charter only by a provision of the latter and, furthermore, an analogous provision of the Statute of the Permanent Court stipulated by an amendment to the Protocol of December 16, 1920. Other amendments may also be necessary, especially those concerning the appointment of the judges. The members of the international court of justice, the main judicial organ of the Organization, cannot be elected by the Council and the Assembly of the League of Nations, as provided by the Statute of the Permanent Court of International Justice. Amendments to the Protocol to which the Statute of the Permanent Court is annexed require the consent of all parties to the Protocol, and because of the close connection between the Court and the League (especially through Art. 33 of the Statute, according to which the League has to bear the expenses of the Court), probably also the consent of the League of Nations. Even if consent on the part of the League should not be considered as necessary it is not very likely that the amendments to the Statute of the Permanent Court, which are desirable from the point of view of the Charter of the United Nations, could be obtained in due time, if at all.

It should not be overlooked that Germany, Japan, and some neutral states, such as Spain and Switzerland, are among the parties to the Protocol, but will not be parties to the Charter of the new League; and that the Soviet Union and the United States, parties to the Charter, are not among the states which have ratified the Protocol of December 16, 1920.

Consequently only the second alternative of paragraph 2 seems to be practically possible; but the new statute may be similar to the old one and the actual members of the Permanent Court of International Justice may be—by an express provision of the new statute—declared the first members of the international court of justice of the new League (on condition of their resignation as members of the Permanent Court of International Justice).

This may be advisable in order to utilize the experience of the personalities concerned. But the organization of the international court of justice and, in particular, the method of appointing the judges, should be different from

that of the Statute of the Permanent Court. In order to make the international court of justice as independent as possible from political influences, and to organize the court as a true judicial organ of the Organization in contradistinction to its political agency, the Security Council, it is necessary to eliminate as far as possible the influence of the governments on the procedure by which the judges are to be selected. Direct election of the judges by the law schools, supreme courts, and other institutions for the study of law of the states parties to the Charter would certainly guarantee a higher degree of independence than election by political bodies such as the Assembly and the Council of the League of Nations.¹⁸

V. SANCTIONS

A. Expulsion from the League as sanction.

With respect to sanctions the Covenant of the League of Nations provides in Art. 16, par. 4, that any member of the League may be expelled from the League for having violated any of its duties under the Covenant by a vote of the Council concurred in by the representatives of all the other members represented thereon. But in case a member resorts to war in disregard of its duties, the other members are obliged to apply economic sanctions against the violator of the Covenant and the Council is authorized to recommend to the several governments concerned military sanctions. Since it depends on any member of the League to decide whether another member has violated the Covenant by resorting to war, and since the Council has only the power to make recommendations which are not legally binding upon the members, the provisions of the Covenant concerning sanctions were not very effective.

¹² Kelsen, Peace Through Law, p. 56.

¹³ This is exactly the contrary of what has been suggested by the Report of the Informal Inter-Allied Committee on the Future of the Permanent Court of International Justice of February 10, 1944. According to the proposals of the Committee (composed of representatives of the United Kingdom, Belgium, Canada, Czechoslovakia, France, Greece, Luxemburg, Netherlands, New Zealand, Norway and Poland), the new Court should be composed of nine judges. The government of each state contracting party to the international treaty establishing the Court should appoint one candidate who should be one of its own nationals. From among this group of candidates the governments, as an electoral body, should elect the nine judges. The tendency of this proposal is to increase the influence of the governments on the selection of the judges, that is to say, to make the Court an instrument of politics rather than an organ of the law. There can be little doubt that the effect of this method of nomination and election would be that each of the five Great Powers which are contracting parties to the statute of the Court would be represented—"represented" in the true sense of this term—on the court so that the Great Powers would have a majority in the Court, although, according to the Dumbarton Oaks Proposals, they would have only a minority in the Security Council. The tendency to limit as little as possible the realm of power politics is also manifested in the Report by the suggestion that the jurisdiction of the Court should be restricted to matters that are "justiciable" and that compulsory jurisdiction should not be conferred upon the court.

As has been pointed out, it is exactly with respect to the problem of sanctions that the Dumbarton Oaks Proposals display remarkable progress.

Like the Covenant in its Art. 16, par. 4, the Dumbarton Oaks Proposals provide, as a general rule, expulsion from the League as a sanction for violations of the constitution of the League. The Proposals differ from the Covenant in that the former authorizes the Assembly to apply this sanction upon recommendation of the Security Council, whereas the latter authorizes only the Council to do so. Another difference consists in the fact that according to the Proposals only a "persistent" violation of the principles contained in the Charter will justify expulsion, whereas according to the Covenant any violation of the Covenant may lead to the application of this sanction. The formula employed by the Proposals is very vague; its effect will be an enlarged discretion of the agencies competent to apply the sanction of expulsion.

The provision suggested by the Dumbarton Oaks conference concerning the suspension of rights or privileges of a member against which preventive or enforcement action is taken by the Security Council is a great improvement. When economic or military sanctions are executed against a member of the League the latter must not be in a position to exercise its rights of membership, as was possible according to the Covenanat of the League of Nations.

B. Economic and military sanctions.

1. The delicts conditioning economic and military sanctions

Like the Covenant of the League of Nations the Dumbarton Oaks Proposals provide economic and military sanctions. In this respect a great difference exists between the two systems. First of all, resort to war, that is, breach of the peace, is not—as it is according to the Covenant—the only condition under which these sanctions are to be employed. Under the new plan the Proposals also consider a threat to the peace as a delict which may justify the use of these sanctions. Chapter VIII, Sec. B, par. 1, stipulates:

Should the Security Council deem that a failure to settle a dispute in accordance with procedures indicated in paragraph 3 of Section A, or in accordance with its recommendations made under paragraph 5 of Section A, constitutes a threat to the maintenance of international peace and security, it should take any measures necessary for the maintenance of international peace and security in accordance with the purposes and principles of the Organization.

There are two different delicts: (1) Failure to settle a dispute in accordance with procedures indicated in paragraph 3 of section A, such as negotiation, mediation, conciliation, arbitration or judicial settlement (this language certainly includes the case where a member refuses to execute the decision of an international tribunal to which the dispute has been submitted. since para-

¹⁴ The Proposals do not contain a provision concerning the enforcement of the decisions of the international court of justice. Such a provision is not necessary since non-fulfilment of

graph 3 authorizes the Security Council to "call upon the parties to settle their dispute by such means" noncompliance with this call is probably also a condition of the sanction provided for in section B, paragraph 1); (2) Failure to settle a dispute in accordance with the recommendations which the Security Council has made under paragraph 5 of section A, that is, when the dispute has been referred to the Security Council.

Both classes of violations mentioned in the preceding paragraph are conditions of a sanction to be executed by the Security Council if they constitute, according to the opinion of the Security Council, a threat to the maintenance of international peace and security. It is of the greatest importance that the Security Council and not each individual member of the League—as under Art. 16 of the Covenant—has the power to decide whether a member has committed one of the delicts which are the condition of a sanction provided by the Charter. This provision constitutes a decisive step towards an effective operation of sanctions. It is to be hoped that the Security Council will decide the question as to the existence of a delict conditioning a sanction by a majority vote.

Beside a threat to the peace, an actual breach of the peace is a delict. Paragraph 2 of section B stipulates:

In general the Security Council should determine the existence of any threat to the peace, breach of the peace or act of aggression and should make recommendations or decide upon the measures to be taken to maintain or restore peace and security.

It is not clear whether there are other cases of "threat to the peace" than those mentioned in paragraph 1 (where reference is made to "threat to the maintenance of international peace and security). In drafting the Charter it is advisable to eliminate this lack of clearness. Paragraph 2 speaks not only of "threat to" but also of "breach of the peace" and "act of aggression." It seems that some type of conduct other than breach of the peace is to be considered as an act of aggression, since otherwise there would be no distinction between the two conceptions. But what is the difference? Another question is this: What is the relation between "threat to the maintenance of international peace and security" of Chapter VIII, Sec. B, par. 1, and "breach of the peace or act of aggression" of paragraph 2 on the one hand, and "threat or use of force in any manner inconsistent with the purposes of the Organization" of Chapter II, par. 4? On the other hand, it seems that "threat or use of force" (Chapter II, par. 4) means the same as "threat to the maintenance of international peace and security" (Chapter

the decision of the court may be interpreted as failure to settle a dispute in accordance with procedures indicated in Chapter VIII, Sec. A, par. 3, and hence entail the enforcement action stipulated in Chapter VIII, Sec. B. Mr. Sandifer says (as cited, p. 712): "The decisions of the court would presumably not be enforced as such, but they would have behind them the powerful pressure generated by the whole procedure of collective action, and they would be reënforced by the prospect of action to prevent any failure to abide by a decision that results in a threat to the peace."

VIII, par. 1) and "threat to the peace" (Chapter VIII, par. 2); and that "use of force" (Chapter II, par. 4) means the same as "breach of the peace or act of aggression" (Chapter VIII, Sec. B, par. 2). If so, it is advisable in drafting the Charter to unify the terminology; if not so, it is necessary to define the meaning of the different terms. If possible, the term "aggression" should be avoided. It is rather a military-technical than a legal term. It can hardly be defined in a way satisfactory for legal purposes.

In the interest of a proper legal technique it is of great importance that the text of the Charter shall define as precisely as possible the delicts to which the Charter attaches the sanctions to be executed by the Security Council.

Again it must be emphasized that the Dumbarton Oaks Proposals confer upon the Security Council-and not upon each member of the League as the Covenant of the League of Nations does—the power to decide whether or not a member has broken the peace or is guilty of an act of aggression. The centralization of this part of the procedure which may lead to the execution of sanctions is most valuable. The proposal as it stands, however, is not the best possible solution of the problem. The Security Council, as a political agency, whose decisions will be determined rather by political principles than by rules of positive law, is not an irreproachable authority to decide the question whether the law in general or the Charter in particular has been violated. This is a legal question which is answered best by a court. cording to the Dumbarton Oaks Proposals the Security Council may even decide the question as to whether a member state attacked by another state has properly used the right of self defense.15 The usual objection against the proposal to confer upon an international court the power to decide the question whether a member of an international organization has violated the constitution of that organization by employing force against another member; and against the further proposal to make the execution of sanctions, especially military sanctions, dependent upon an affirmative decision by such court, is: that in case of breach of peace urgent action is necessary, that it is not possible to wait until the court has reached a decision. This objection is not quite convincing. For, the political agency endowed with the task of executing the sanction would certainly have to examine the case before it could reach a decision; and there is no reason to suppose that the procedure of a court in such a case must necessarily take much longer than that of a political agency. To ascertain that a member state has violated the Covenant of the League by employing force against another member the court might use a special procedure adapted to this purpose, and such procedure might work as fast as any procedure employed by a political agency.

¹³ The British Commentary on the Dumbarton Oaks Proposals, p. 5, says: "The right of self-defence would of course remain to all members if they were suddenly attacked by another State. But the Organization would have power to intervene immediately and determine whether the right of self-defence has been properly used."

If this suggestion, for some reason or other, should seem unacceptable it is worth while to consider a provision that in case the Security Council takes enforcement action against any state under the Charter, it should at the same time submit the case to the international court of justice and should stop its action if the court should decide that the state in question had not been guilty of a violation of the Charter. It should not be overlooked that in proportion as more power is conferred upon a political agency just so more guarantees should be established to ensure that this agency will not misuse its power, and that it will exercise force only for the maintenance of the law, not for the interests of Great Powers controlling the agency.

(2) Sanctions not involving the use of armed force.

The sanctions are organized as follows: Chapter VIII, Sec. B, par. 1, stipulates that in case of a threat to the maintenance of international peace and security, the Security Council

should take any measures necessary for the maintenance of international peace and security in accordance with the purposes and principles of the Organization.

Paragraph 2 says:

In general the Security Council should determine the existence of any threat to the peace, breach of the peace or act of aggression and should make recommendations or decide upon the measures to be taken to maintain or restore peace and security.

It seems that this is intended to be the general rule concerning sanctions. If so, paragraph 2 is not consistent with paragraph 1. For in case of "threat" the Security Council has, according to paragraph 1, to "take any measures necessary . . ."; according to paragraph 2 the Security Council has in case of a threat to, as well as in the case of a breach of, the peace a choice between making mere "recommendations" and "deciding" upon the measures to maintain or restore peace and security. In paragraph 1 only the maintenance of peace, not its restoration, is mentioned. It is to be hoped that these inconsistencies will be eliminated in the text of the Charter.

The Dumbarton Oaks Proposals distinguish two kinds of sanctions for threat to the peace and breach of peace: sanctions involving and sanctions not involving the use of armed force. The latter have more than an economic character (though in this respect they are comparable with the sanctions established by Art. 16, par. 1, of the Covenant of the League of Nations). Their scope is quite broad since Chapter VIII, Sec. A, par. 3, speaks of "diplomatic, economic, or other measures not involving the use of armed force." Such measures, says paragraph 3, "may include complete or partial interruption of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic and economic relations." The Security Council is empowered "to call upon members of the Organization to apply such measures." It does not depend upon the

discretion of the members—as has been the case according to Art. 16, par. 1, of the Covenant—to exercise these sanctions; the Security Council has to decide whether sanctions shall be employed, and the members on which it may call to apply the measures determinated by paragraph 3 are—thus we may interpret the Proposals—legally bound to obey. This results from Chapter II, par. 5:

All members of the Organization shall give every assistance to the Organization in any action undertaken by it in accordance with the provisions of the Charter.

and from Chapter VI, Sec. B, par. 4:

All members of the Organization should obligate themselves to accept the decisions of the Security Council and to carry them out in accordance with the provisions of the Charter.

(3) Sanctions involving the use of armed force.

Military sanctions are to be employed only if the Security Council considers measures not involving the use of armed force to be inadequate (Chapter VIII, Sec. B, par. 4). Action by air, naval or land forces may include, according to paragraph 4, "demonstrations, blockade, and other operations by air, sea or land forces of members of the Organization." means that there will be no separate armed force of the United Nations, different and independent from the armed forces of the members. In this respect there is no difference between the Dumbarton Oaks Proposals and the Covenant of the League of Nations. However, there are other important differences. The members of the League of Nations are free to accept the Council's recommendation concerning their contributions of armed forces to the armed forces used to protect the covenants of the League whereas the members of the Dumbarton Oaks Organization are to be bound to comply with the call of the Security Council to make available to this agency armed forces, facilities, and assistance necessary for the purpose of maintaining international peace and security. The Covenant of the League of Nations says nothing about the important question of who shall command the armed forces whereas in the Proposals the Security Council is designated as the authority competent to direct the military action for the maintenance or restoration of international peace and security.

Chapter VIII, Sec. B, par. 5, stipulates:

In order that all members of the Organization should contribute to the maintenance of international peace and security, they should undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements concluded among themselves, armed forces, facilities and assistance necessary for the purpose of maintaining international peace and security. Such agreement or agreements should govern the numbers and types of forces and the nature of the facilities and assistance to be provided. The special agreement or agreements should be negotiated as soon as possible and should

in each case be subject to approval by the Security Council and to ratification by the signatory states in accordance with their constitutional processes.

The "call" of the Security Council is binding upon the members; but it presupposes an "agreement or agreements" concluded among them. The agreement, or agreements, concern—we may suppose—only the size of the armed forces to be placed at the disposal of the Security Council, not the question as to whether a member has or has not to contribute to the military action for the maintenance of peace and security. It is advisable to clear up this point in the draft of the Charter and to stipulate a provision to apply in case the "agreement or agreements" cannot be brought about.

For the purpose of urgent military measures national air force contingents are provided. In this respect paragraph 6 stipulates:

In order to enable urgent military measures to be taken by the Organization there should be held immediately available by the members of the Organization national air force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action should be determined by the Security Council with the assistance of the Military Staff Committee within the limits laid down in the special agreement or agreements referred to in paragraph 5 above.

Paragraph 4 expressly says that the Security Council should be empowered to take such action by air, naval or land forces as may be necessary to maintain or restore international peace and security and in paragraph 9 mention is made of "the employment and command of forces placed at the Security Council's disposal." In this paragraph it is stipulated that a Military Staff Committee whose function is to advise and assist the Security Council "should be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council." Paragraph 9. contains detailed provisions concerning the organization of the Military Staff Committee. One of its functions is characterized (Chapter VIII, Sec. B, par. 9) as follows:

to advise and assist the Security Council on all questions relating to . . . the employment and command of forces placed at its disposal. . . .

This Committee in an auxiliary organ of the Security Council ¹⁶ in its capacity as a Commander of the military forces at its disposal. With the assistance of the Military Staff Committee the Security Council is authorized to make plans for the application of armed forces." "Questions of the command of "forces," says paragraph 9, "should be worked out subsequently."

All these provisions justify the assumption that military action against a

¹⁶ The British Commentary on the Dumbarton Oaks Proposals, p. 4, says: "The Military Staff Committee would be responsible under the Security Council for the strategic direction of armed forces placed at the disposal of the Security Council and for advice to that body in all military matters with which it is concerned."

peace-breaker is to be placed under the direct command of the Security Council. Paragraph 7 stipulates:

The action required to carry out the decisions of the Security Council for the maintenance of international peace and security should be taken by all the members of the Organization in cooperation or by some of them as the Security Council may determine. This undertaking should be carried out by the members of the Organization by their own action and through action of the appropriate specialized organizations and agencies of which they are members.

The words "by their own action" could be misunderstood to mean that the function of the Security Council is restricted to rather general decisions by which all the members or some of them are ordered to apply military sanctions against the state which has threatened or broken the peace, whereas the military details of the action are left to the members concerned. ever, the words "by their own action" have probably been chosen only to stress the idea that the armed forces placed at the disposal of the Security Council do not form a body different from the national armed forces of the members, that there will be no armed force of the new League different and independent from the armed forces of the members, no international police force as it is usually called. In any case it will be necessary to formulate in the Charter more precisely than has been done by the Proposals the function and position of the Security Council in the military action for the maintenance of peace and security, so that there will be no doubt as to the extent to which the Security Council is competent to direct the military actions of the United Nations.

VI. REGIONAL ARRANGEMENTS

Like Art. 21 of the Covenant of the League of Nations, which states that nothing in the Covenant shall be deemed to affect the validity of regional understandings, Chapter VIII, Sec. C, par. 1 of the Dumbarton Oaks Proposals says:

Nothing in the Charter should preclude the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and their activities are consistent with the purposes and principles of the Organization. The Security Council should encourage settlement of local disputes through such regional arrangements or by such regional agencies, either on the initiative of the states concerned or by reference from the Security Council.

The Dumbarton Oaks Proposals concerning regional arrangements are much more detailed than the analogous provisions of the Covenant of the League of Nations. The provision that local disputes may be settled by local agencies deserves particular attention. It implies the possibility of estab-

lishing regional courts, subordinated to the international court of justice as a central court of appeal.

Paragraph 2 runs as follows:

The Security Council should, where appropriate, utilize such (regional) arrangements or agencies for enforcement action under its authority, but no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

It is of the greatest importance that enforcement actions be strictly centralized. They are the prerogative of the Security Council.

VII. ARRANGEMENTS FOR INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION

Like the Covenant of the League of Nations, Art. 23, the Dumbarton Oaks Proposals in Chapter IX contain arrangements for international economic and social coöperation. Whereas, however, Art. 23 of the Covenant enumerates the special purposes for which the members of the League are bound to coöperate, namely, human conditions of labor, just treatment of native inhabitants of territories under the control of the League, traffic in women and children, traffic in opium and other dangerous drugs, trades in arms and ammunition, freedom of communication and of transit and equitable treatment for the commerce of all members of the League, the Dumbarton Oaks Proposals have chosen a general formula covering any kind of international economic and social coöperation. Chapter IX, Sec. A, par. 1, stipulates

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international, economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms. Responsibility for the discharge of this function should be vested in the General Assembly and, under the authority of the General Assembly, in an Economic and Social Council.

The Organization of the Economic and Social Council is essentially different from that of the Security Council. According to Section B of Chapter IX

The Economic and Social Council should consist of representatives of eighteen members of the Organization. The states to be represented for this purpose should be elected by the General Assembly for terms of three years. Each such state should have one representative, who should have one vote. Decisions of the Economic and Social Council should be taken by simple majority vote of those present and voting.

The striking difference between the organization and voting procedure of the Economic and Social Council on the one hand, and that of the Security Council on the other hand, may be explained by the fact that the Economic and Social Council as well as the General Assembly under whose authority

this Council acts, is not competent, as the Security Council is, to adopt decisions binding upon the members. The competence of the Economic and Social Council as well as that of the General Assembly in the field of economic and social cooperation, is, in the main, restricted to making and executing recommendations.

VIII. THE SECRETARIAT

Chapter X of the Dumbarton Oaks Proposals stipulates:

- 1. There should be a Secretariat comprising a Secretary-General and such staff as may be required. The Secretary-General should be the chief administering officer of the Organization. He should be elected by the General Assembly, on recommendation of the Security Council, for such term and under such conditions as are specified in the Charter.
- 2. The Secretary-General should act in that capacity in all meetings of the General Assembly, of the Security Council, and of the Economic and Social Council and should make an annual report to the General Assembly on the work of the Organization.

So far there is no essential difference between Chapter X of the Proposals and Art. 6 of the Covenant of the League of Nations concerning the Secretariat. Paragraph 3 of Chapter X however, contains a provision which has no counterpart in the Covenant:

The Secretary-General should have the right to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security.

In this respect the Secretary-General acts on his own initiative. This right gives him a somewhat higher position than that which the Secretary-General of the League of Nations has according to the wording of the Covenant.

IX. Subject Matters Not Regulated by the Dumbarton Oaks Proposals

Finally it should be noted that the Dumbarton Oaks Proposals differ from the Covenant of the League of Nations in that the Proposals do not contain provisions concerning subject matters regulated by the Covenant. The Dumbarton Oaks conference made no suggestions concerning the seat of the new League and the diplomatic privileges of the representatives of its members, its officials, buildings and other property, matters covered in some detail by the provisions of Art. 7 of the Covenant. The Proposals do not contain provisions concerning the registration of treaties concluded by the members, corresponding to Art. 18 of the Covenant, or provisions concerning obligations of the members inconsistent with the terms of the Charter, corresponding to Art. 20 of the Covenant. The Proposals do not deal with the problem of inapplicable treaties, referred to by Art. 19 of the Covenant. However the other problem referred to by Art. 19: "International conditions whose

continuance might endanger the peace of the world," is covered by the jurisdiction of the General Assembly as determined by the Proposals, Chapter V, Sec. B, par. 6:

The General Assembly should initiate studies and make recommendations for the purpose of promoting international cooperation in political, economic and social fields and of adjusting situations likely to impair the general welfare.

The gaps in the Proposals may be explained by the fact that (according to a note at the end of the official statement) not only the question of voting procedure in the Security Council, but also several other questions are still under consideration.

A. The seat of the new League.

The seat of the new League constitutes a difficult question. It will perhaps not be possible to establish such seat on the territory of a neutral state, since, as pointed out, it is not certain that neutral countries, and especially Switzerland, will join the new League. The best solution of the problem would be to make the seat of the League completely independent from any government other than that of the League itself, that is to say, it would be advisable to create for the seat of the League a territory of approximately the size and of about the same legal status as that of the state of the Vatican City. The territory concerned should be ceded by its actual sovereign either to the League as a juristic person of international law, or to all the states members of the League. In the first case, the subject of sovereignty over the territory would be the League as subject of international law; in the second case, the territory would have the character of a common territory of the states in their capacity as, and as long as they are, members of the League. In both cases it would be necessary to establish special agencies for the exercise of the territorial sovereignty, legislative as well as executive. agencies would have the character of direct organs of the League in its capacity as territorial sovereign or of common organs of the member states. The Security Council would certainly be the proper organ to exercise the sovereignty of the League or the joint sovereignty of its members over the territory on which the seat of the League is established.

B. Withdrawal from or liquidation of the League of Nations.

As regards Art. 20 of the Covenant of the League of Nations, which has no counterpart in the Dumbarton Oaks Proposals, there exists, from a legal point of view, a certain difficulty that should not be underestimated. This Article stipulates the obligation of the members of the League of Nations not to enter into any engagements inconsistent with the terms of the Covenant. Since the Charter of the new League will certainly not be consistent with the Covenant of the old League—obligations under the Charter might be in direct conflict with obligations under the Covenant if both organizations

should exist simultaneously—states which are members of the League of Nations cannot become contracting parties to the Charter of the United Nations, or join this organization after its establishment, without violating their obligation under Art. 20 of the Covenant. To end this obligation there are two ways: individual withdrawal from the League of Nations according to Art. 1, par. 3, of the Covenant, or dissolution of the League of Nations. The first way has the disadvantage that withdrawal from the League of Nations becomes effective only after two years' notice. As regards dissolution of the League of Nations, it is doubtful whether this can be accomplished by an amendment to the Covenant of the League according to its Art. 26, declaring the League as dissolved. The concept of "amendment" may be interpreted as presupposing continued existence of the League. In paragraph 2 of Article 26, where it is stipulated that no amendment shall bind any member of the League which signifies its dissent therefrom, the term "amendment" is certainly used in the sense just mentioned. If this is supposed to be the general meaning of the term in question, dissolution of the League of Nations would be possible only by an amendment to the four Peace Treaties of which the Covenant of the League is an integral part. This is probably out of the question. However, dissolving the League by an amendment to its Covenant is not entirely excluded. The term "amendment" may be interpreted in a broad way as comprising "dissolution." Paragraph 2 of Article 26 may be understood as referring not to all possible amendments, but only to amendments by which the members are to be bound, not to amendments by which the members are to be freed from obli-Paragraph 1 of Art. 26 may be considered as applicable to an amendment the purpose of which is to dissolve the League. Such an amendment requires nothing but an agreement ratified by all members of the Council and by a majority of the members of the League whose representatives compose the Assembly. No resolution of the Council or the Assembly is necessary according to the wording of Art. 26. Whether such an amendment to the Covenant is a practical way to free these states, which intend to ratify the Charter of the new League or to join it later, from their obligation under the Covenant, depends on the question whether the majority of the states actually members of the League of Nations and the states still members of the Council of the League of Nations are in favor of the establishment of the New League and are willing to ratify the Charter of the new League or join it later.

It stands to reason that even without formal dissolution the League of Nations will become inoperative at the moment the new League is created. Hence, politically, it will not be impossible to inaugurate the activity of the new League by a unanimously adopted resolution of the General Assembly declaring that the work of the League of Nations is terminated (perhaps also: that the United Nations have been put in the place of the League of Nations) and that, consequently, the members of the new League consider themselves

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no longer bound by the Covenant. Since this way is not incontestable from a legal point of view, it should be chosen only if a dissolution of the League of Nations by amendment according to Art. 26 of the Covenant should prove not to be practicable.

C. Disarmament; Mandates; guarantee of status quo.

Among the subject matters regulated by the Covenant of the League of Nations, but not mentioned in the Dumbarton Oaks Proposals, there are three of which it is to be hoped that the silence of the Proposals is intentional and not to be explained by the fact that these matters are still under consideration; so that the definite Charter will not follow the Covenant in these respects.

First, no obligation of disarmament of the members of the new League is provided for, as stipulated by Art. 8 of the Covenant. Chapter V. Sec. B. par. 1, it is true, states that the General Assembly should have the right to consider the general principles of cooperation in the maintenance of international peace and security, "including the principles governing disarmament;" these words are immediately followed by the phrase: "and the regulation of armaments." Among the functions and powers of the Security Council disarmament is not mentioned at all. Chapter VIII, Sec. B, par. 9 stipulates, it is true, that the Military Staff Committee should advise and assist the Security Council on questions relating "to the regulation of armaments, and to possible disarmament;" but Chapter VI, Sec. B, par. 5. expressly stipulates that the Security Council, with the assistance of the Military Staff Committee, "should have the responsibility for formulating plans for the establishment of a system of regulation of armaments for submission to the members of the Organization." Armament rather than disarmament will be a concern of the future Charter. The experiences of the League of Nations show that disarmament cannot be brought about as execution of an obligation but only as an automatic effect of the international security established by the international Organization.

Second, no Mandates seem to be intended, as stipulated by Art. 22 by the Covenant of the League of Nations.

Third, there is no provision analogous to that of Art. 10 of the Covenant by which each member of the League is obliged to respect the territorial integrity and existent political independence of all the other members. It seems that the Charter of the new League is not to be burdened with a guarantee of the territorial status quo.¹⁷ In this respect too, a comparison between the Dumbarton Oaks Proposals and the Covenant of the League of Nations turns out to the advantage of the new Organization.

¹⁷ The British Commentary on the Dumbarton Oaks Proposals, p. 5, says: "It is considered that the recognition of this general principle of 'sovereign equality' gives protection to States against arbitrary action by other States or by the Organization itself, while at the same time it does not involve the maintenance of the status quo for all time."

EDITORIAL COMMENT

IMPRRIALISM

The basic right of the independence and freedom of nations logically precludes outside intervention in any form. The fear that imperialistic ambitions constitute the greatest menace to independence and freedom is a legitimate fear. It is imperative, however, that there be no misconceptions concerning imperialism or popular misuse of this term.

In its origins imperialism meant in the strictest sense the attempt of any nation to extend its control for purposes of exploitation over other peoples not at the moment included in the metropolitan area. Rome is the classical prototype of imperial power. The extension of British control over distant lands and peoples is the modern prototype. So likewise are the colonial empires of Portugal, Holland, France, and Belgium.

The twentieth century, however, has marked a profound change of attitude towards subject and "dependent" peoples, in accordance with the principles consecrated in the Mandate System adopted by the Covenant of the League of Nations. Arbitrary rule and selfish exploitation has gradually given way to the recognition of the right of such peoples to attain self-government and to enjoy their own material resources. The present war has given a great impetus to the acceptance of the principle that colonial administration must be considered as a trusteeship in behalf of the subject peoples. Conclusive evidence of this change of attitude is to be found in recent pronouncements by responsible representatives of the Colonial Powers, notably in the cases of India, the Dutch East Indies, the French Congo, the joint Anglo-American Caribbean Commission, and the agreement concerning the administration of the islands of the Southwest Pacific which was signed by the Governments of Australia and New Zealand on January 21, 1944.

There is no justification for doubt concerning the reality or the sincerity of these statements of policy by the colonial powers. It may be fairly asserted that the evils and abuses of earlier imperialism, such as the cruel exploitation of the Belgian Congo under the personal rule of King Leopold, have long since been eliminated. The arguments now generally used in criticism of the colonial powers, as in the instance of India, are not based so much on charges of unjust exploitation as on the abstract right of all peoples to attain self-government. In all fairness it should be recognized that the British Empire in recent times has been the greatest school for education in self-government ever created, as evidenced by the independence of the Dominions and by the development of nationalism in India.

In spite of this complete change of attitude towards dependent peoples it is to be regretted that the term imperialism is still employed in a loose sense with reference to the legitimate aims of nations to extend their trade and influence throughout the world. It is a colorful word much used by those who associate capitalism as the wicked partner with imperialism.

The question how far a nation may properly go in its efforts to extend its economic and cultural influence without endangering the independence and freedom of other nations is fundamental. Germany, in the interval between the First and Second World Wars, was peculiarly successful in its trade relations with certain of the Balkan nations which could dispose of their exports only by agreeing to onerous conditions. These agreements undoubtedly strengthened the political influence of Germany in the Balkans. Nevertheless it would seem inappropriate to call this trade policy imperialistic.

The attitude of Great Britain towards Egypt has been called imperialistic, though the latter nation is not a part of the British Empire. In insisting on the adequate protection of the Suez Canal Great Britain unquestionably has limited the sovereign freedom of action of Egypt. The same might be said of the attitude of the United States towards the Republic of Panama. In both instances it would seem clear that what is involved is not the imperialism of exploiting subject peoples but rather the safeguarding of strategic international highways for the benefit of all nations.

This brings us to the consideration of a general principle which applies to all peoples alike, whether fully independent or completely dependent. This fundamental principle provides that all peoples hold their territories and their resources subject to the supreme claims of international security and welfare. This goes for Suez, Panama, Hawaii, Hong Kong, and Gibraltar, as well as for Singapore. No people may properly claim the right of complete independence unless they are prepared and able to fulfill all of their international obligations. The present war has demonstrated that we have now reached that stage in world relationships when a nation is constrained to acknowledge its responsibilities for international security and welfare. If it does not so acknowledge its responsibilities it is almost certain to be subjected to constraints and restraints.

We are now witnessing the emergence of consortiums of nations for peace and security. Those nations are conscious of their responsibilities as trustees for the appropriation and utilization of strategic naval and air bases for the safety of all. Such action cannot fairly be called imperialism.

The exploitation of the natural resources of territories fortuitously occupied by peoples who are as yet unable to govern themselves, as in the case of Malaya, New Guinea, and the islands of the Pacific, has become a serious problem for all the colonial powers immediately concerned. They are now aware that the control of such essential raw materials as rubber and tin is a matter not for selfish exploitation or lamentable competition but for regulation by common agreement in the interests of the native populations as well as of those nations which may require these products. The controlling principle at stake, which really amounts to a kind of reserved international

right, and which is receiving general acceptance, is the security and welfare of all nations. The term imperialism, with all of its opprobrius connotations, may no longer be fairly applied.

We thus arrive at this result, namely, that the exploitation of peoples not yet prepared for self-government, nor ready to assume all of their obligations in the family of nations, is definitely proscribed. Their best interests are to be subserved through consortiums of nations, or by an international organization seeking the safety and the welfare of all. This obligation of trusteeship, whether of Great Britain for Gibraltar, of the United States for Pearl Harbor, or for the use of any strategic base, or essential raw materials, is in no way a derogation from the right of independence. It is the acknowledgment that the highest exercise of sovereign power lies in the willingness to submit to restrictions and onerous responsibilities for the sake of international security and the general welfare.

PHILIP MARSHALL BROWN

JUDICIAL NOTICE OF FOREIGN LAW

A notable advance in the field of international law has recently been achieved by legislative action taken in the State of New York. While primarily applicable within the State the legislation is not entirely without significance in procedure before international tribunals. An ancient principle prevailing not only in England and in this country but also in jurisdictions on the Continent of Europe and in Latin America required that foreign law should be proved as a fact whenever material to the trial of a case. The principle seems to have been derived, in both the Civil Law and the Common Law, from the logic of procedural rules rather than from any practical considerations. By Story's time it had come to be recognized that foreign law was to be proved not for the jury but for the court, and this principle has been widely accepted in the jurisprudence of America and also by the Supreme Court of Judicature Act (1925) in England.

The divergence existing between the various jurisdictions in the United States with regard to other questions of pleading and proving foreign law was the cause of much confusion and many injustices. This induced the Commissioners on Uniform State Laws in 1936 to recommend for adoption an Uniform Judicial Notice of Foreign Law Act pursuant to which the courts were required to take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States. Fifteen States have adopted the uniform statute while others have adopted statutes of somewhat similar tenor. None of these provide, however, for judicial notice of the law of a foreign country, excepting those of a few States, notably Massachusetts.

While this legislation facilitates a more prompt disposal of disputes of law, the necessity for pleading a foreign law, and perhaps of proving it by prima

¹ 9 Uniform Laws Annotated (1942), 269-274.

² Massachusetts General Laws (1932), c. 233, § 70.

facie evidence, still remains. The old Common Law rule that unless the foreign law is proved it is presumed to be the same as the local law still harries the practitioner. The Restatement of the Law of Conflict of Laws promulgated in 1934 by the American Law Institute declares that the presumption is not to be made with regard to the statutory law of another state but it retains the presumption as to the common law even of another Common Law state. The oral or written testimony of witnesses learned in the existing law of the foreign country is often difficult to procure.

The New York legislature, after a most exhaustive report by the Judicial Council of the State, has now taken another forward step by an enactment which provides that judicial notice may be taken by any trial or appellate court of the following matters of law:

A. 1. A law, statute, proclamation, edict, decree, ordinance, or the unwritten or common law of a sister state, a territory or other jurisdiction of the United States, or of a foreign country or political subdivision thereof.

Under this legislation the foreign law need not be pleaded, and if the court does take judicial notice of a foreign law the court may consider any testimony, document, information or argument on the subject, whether the same be offered by counsel, a third party or discovered through its own research.⁵

A principle of international law is frequently enunciated by national tribunals; a rule which allows a court to take judicial notice, after proper research, of the acceptance of a principle of international law by a foreign municipal court tends to facilitate the administration of justice. ish Prize Court in 1940 took judicial notice of the decision of the Supreme Court of the United States in the case of *The Harrison* which allowed a ship to be condemned under the law of nations by reason of enemy ownership if no other claimant appeared after the lapse of a year and a day from the institution of prize proceedings. The British Prize Court Rules of 1939 now provide a period of six months from the date of service of the writ, unless enemy ownership can be sufficiently proved by the ship's papers or upon the evidence of witnesses from the captured ship. Sir Boyd Merriman, President of the Prize Court, refused to hold that the period of six months had been substituted for the period accepted by the usage of nations. It is true that the particular ship was condemned upon evidence, but the Prize Court judge took judicial notice of the fact that the usage of nations had recognized the longer period, which could not be modified "by what is merely a municipal rule of procedure." 6

- Restatement, §§ 622–623.
- New York Civil Practice Act, § 344-a, effective September 1, 1943.
- ⁵ The same; Paragraphs C and D. A discussion of the statute by Leonard S. Saxe is given in 28 Journal of the American Judicature Society (1944) 86.
- ⁶ The Alwaki and Other Ships, 1940, P. 215, 219-223, citing The Harrison, 1816, 1 Wheaton 298. See G. H. Hackworth, Digest of International Law, Washington, 1940-1944, Vol. VII, pp. 304-305.

The Permanent Court of International Justice has also shown its determination to take judicial notice of municipal law where necessary for the decision of a dispute properly brought before it. Frequently an international tribunal has to examine the nature and effect of municipal law in judging whether a state has carried out its international obligations in the protection of the rights of individuals of a complainant state. The municipal law may itself be the source of such rights; similarly, the nationality of persons is based primarily upon national and not international law. It was doubtless with a view to these considerations that Article 49 of the Statute of the Permanent Court provided that the Court may call upon the agents in a case to supply "explanations" of municipal law.

In the cases brought by the French Government against the Republic of Brazil and the Serb-Croat-Slovene State, respectively, in behalf of certain French bondholders, for an interpretation and determination of the obligations arising under an issue of bonds floated in France, the Court held that it was not obliged to know the municipal law of the various countries but that it was free to obtain knowledge of such law either by evidence or through any researches which the Court might undertake of its own motion. The cases were submitted under special agreements in which the Court was not to be bound by the decisions of a court of either the debtor or the creditor nation, in estimating the weight to be attached to its municipal law. Notwithstanding this provision, the Court said: 8

It would not be applying the municipal law of a country if it were to apply it in a manner different from that in which that law would be applied in the country in which it is in force. Once the Court has arrived at the conclusion that it is necessary to apply the municipal law of a particular country, there seems no doubt that it must seek to apply it as it would be applied in that country.

The question at issue was that of the application of a French statute which compelled the creditor to accept payment in inconvertible bank notes and which rendered null and void any provision for payment in metal currency. The Court decided to supplement the text of the statute by an investigation of its own into the decisions of French courts which interpreted the statute. It found that although a gold clause could be rendered null and void by national legislation with respect to a domestic transaction, this did not apply to international contracts even when payable in France.

The results reached in these opinions of the Permanent Court were probably influenced by modern trends in the jurisprudence of the countries of western Europe. It is quite true that the old rule requiring factual proof of

⁷ See Manley O. Hudson, The Permanent Court of International Justice, 1920–1942, New York, 1943, pp. 624–626.

⁹ Permanent Court of International Justice, Judgment No. 15 (Brazilian Loans) *Publications of the Court*, Series A, Nos. 20–21, p. 124; to the same effect, Judgment No. 14 (Serbian Loans), the same, p. 46.

⁹ The same, p. 123.

ARTHUR K. KUHN

foreign law still prevails in some jurisdictions, especially in France, Italy, and other countries closely following the Napoleonic codes. Other jurisdictions permit the court to apply the foreign law ex officio. In both groups of countries, foreign law is proved with a greater facility than in Common Law jurisdictions because the rules of evidence are less restrictive and permit the presentation of written opinions by qualified persons not subject to oral examination at the trial; indeed, the taking of oral testimony on the foreign law is unusual in continental Europe and held by some writers to be entirely improper. The Code of Private International Law accepted by some fifteen Latin American countries (Bustamante Code) adopts the principle of taking judicial notice of laws of countries which have accepted the code. It also provides procedure for obtaining proof of the foreign law through the diplomatic channel. 12

An international tribunal does not regard the law of a national jurisdiction as being either domestic or foreign. If it is part of the issues in dispute, it will rest with the court to conduct its own researches, doubtless with the aid of the parties, especially where the law is unwritten and is to be found primarily in judicial decisions. The recent legislation in New York is thus in line with the practice of international tribunals. It may, therefore, be considered a legislative achievement both progressive and timely in view of the complex problems of foreign law to be dealt with in the post-war period.

LETHE FUTURE OF THE INTERNATIONAL LAW FOR THE PROTECTION OF NATIONAL MINORITIES

For twelve years (1920–1932), down to the time when he left Europe permanently for America, this writer studied intensively the theory of the League system of international protection of national minorities. During the same period, in his capacity as Director of the Austrian League of Nations Union and as a member of the Minorities Commission of the International Association of League of Nations Societies—so ably directed by its Secretary General, the French scholar Professor Théodore Ruyssen, an enthusiastic supporter of the League and a great friend of the minorities—he took part in innumerable international conferences all over Europe which

¹⁰ See the comprehensive review by E. Doroghi in 25 Proceedings of the International Law Association, Budapest Conference, 1908, pp. 221-259.

¹¹ See A. Nussbaum, 50 Yale Law Journal (1940), pp. 1018, 1027.

¹³ Arts. 408-411. See International Conferences of American States, New York, 1931, p. 366.

¹ Josef L. Kuns, La question de la procédure en matière des minorités, Revue Sottile, Vol. III (1925), pp. 69–82; Some urgent and practical reforms concerning the international protection of minorities, International Law Association, 1926 session, Proceedings; Der Schutz der nationalen Minderheiten als Rechtsproblem, Bulletin International du Droit des Minorités, The Hague, 1930; Prolegomena zu einer allgemeinen Theorie des internationalen Rechts nationaler Minderheiten, Zeitschrift für öffentliches Recht, Vol. XII (1932), pp. 221–272.

dealt with this problem. He listened to minorities discussions at Geneva, knew the outstanding representatives of minorities and majorities, visited the regions of Europe where the minorities problem was most burning (the "Belt of Minorities States"); he attended many discussions between minorities and majorities, sometimes conducted on a high level and in a spirit of coöperation, sometimes leading to the most acrimonious debates, revealing deepest bitterness, dissatisfaction, and even hatred—at conferences, nevertheless, where everybody was supposed to be a full supporter of the League of Nations. From this long experience this writer has become firmly convinced that an adequate solution of the problem, which gave rise to an enormous literature, is one of the conditions prerequisite for an enduring peace in Europe, and, therefore, in the world.

In 1932, when this writer left Europe, the year after the collapse of the Vienna Credit-Anstalt and the beginning of the world-wide depression, the year after Japan's invasion of Manchuria—beginning of the end of the League—, the year before Hitler's coming into power, the League's minorities system was already in a critical situation. The declaration of the Polish Foreign Minister Colonel Beck in the League Assembly on September 13, 1934, which amounted to an open repudiation of Poland's international minorities obligations, a breach of treaty against which the League did not react effectively, brought the League system to a virtual end and led finally to the complete disappearance of the Minorities Section of the League Secretariat. Important German minorities were Hitlerized and made a tool of the foreign policy of the Third Reich. Under these conditions little was heard about the whole League system of minorities protection several years before the outbreak of the present war.

But now, when the making of a European peace settlement is no longer a remote and theoretical but a practical and urgent problem, the perception that while the making of a "new map of Europe" may possibly prevent the creation of new artificial minorities it cannot, even under the hypothesis of the wisest and most just arrangements, eliminate the problem of national minorities entirely, has led to a new discussion of this problem. Just as the League of Nations is studied again in order to discover the extent to which and why it was a failure, so the system of the international protection of national minorities is reëxamined and the question whether, and if so why, it was a failure is asked: the past experience and its critical analysis is used as a basis for future solutions.

It never will be possible to solve the European problem of national minori-

² The standard bibliographical work is Robinson: Das Minoritätenproblem und seine Literatur, 1928. A new edition of this work, covering the whole literature down to 1943, will be published soon in the United States.

³ Jacob Robinson and others, Were the Minorities Treaties a Failure?, New York, 1943; Joseph Sulkowski, The problem of international protection of national minorities, New York, 1944; "The Minorities Problem," in New Europe, Vol. IV, No. 6 (July-August 1944), pp. 10-29.

ties merely by the application of the principle of the "self-determination of nations." The creators of the Paris Peace Treaties were fully aware of this impossibility and tried to supplement the principle of the self-determination of nations by an international law for the protection of national minorities under the guarantee of the League of Nations.

But it must be borne in mind that this experiment constitutes only one of the possible solutions of this problem. Another solution might be sought by purely municipal law. Such an attempt was made by the "Law of Nationalities" of the Austrian Empire, based on Art. XII of the Constitution of 1867, promising the "inviolable right of each nationality to preserve and develop its nationality and language," a law which became a model for the Paris Minorities Treaties. It tried to reconcile the permanent preservation and development of the national characteristics of each nationality with their living together in a multinational state. Such an attempt can be seen in the nationalities policy of the multinational U.S.S.R.—Stalin was in 1917 People's Commissar of Nationalities—, although the Soviet leaders are not inspired by a romantic valuation of national language, folk-lore, and traditions.4 Municipal legislation for this purpose was enacted in the post-war period by states not bound by Minorities Treaties, such as Germany and Denmark, or by states, bound by such treaties, but granting more than they were internationally bound to grant, such as the Estonian Law on Cultural Autonomy.

But the creators of the Paris Peace Treaties, distrusting an equitable solution by municipal law only, imposed international minorities obligations on certain states. Although there was some precedent for the protection of religious minorities, these treaties were an innovation insofar as the treatment by a sovereign state of its own citizens, belonging to national minorities, was subordinated to international law.

In the most recent literature, the work of Robinson and his colleagues is a scholarly and painstaking research into this experiment. The authors admit that there were many reasons for its failure: the ambiguity of many terms of the minorities treaties, or their vagueness and generality, their too schematic character—failing to distinguish between the very different types of different national minorities; the inadequacy of the substantive law, the failure to recognize the minorities as collective units, the lack of protection against economic discrimination—all this leading to the wish of the minorities for reform, particularly in the direction of an internationally guaranteed cultural autonomy. There further was the inadequacy of the procedural law and its inadequate handling by the organs of the League, with the striking exception of the Permanent Court of International Justice; the attitude taken by the Great Powers. The minorities themselves are not free from blame, especially the "strong" German and Hungarian minorities after 1933.

⁴ Erich Hula, "The Nationalities Policy of the Soviet Union," in Social Research, Vol. XI, No. 2 (1944), pp. 168-201.

There was further the failure of the treaty-bound states to carry out their obligations in their municipal law and to cooperate properly with the League. But the authors attribute the failure of the system, in the first place, to the breakdown of the presuppositions of the whole Versailles system: democracy and economic liberalism, and to the continuously deteriorating general situation of Europe. They reach the conclusion that "despite all the faults and shortcomings the experience of twenty years does not justify the condemnation of a most remarkable experiment."

Professor Sulkowski's pamphlet, on the other hand, is a typical expression of the attitude of the majority peoples in the treaty-bound states. He gives a brief and absolutely correct survey of the origin and contents of the Minorities Treaties, but restates all the arguments contra, which were already fully stated by Prime Minister Paderewski at the Paris Peace Conference: the merely particular character of this new international law, which involves a discrimination against the treaty-bound states, a damage to their prestige, an unjustified restriction of their sovereignty, a violation of the principle of the equality of states, a humiliation, causing perpetual resent-While, before the present war, the minorities wanted an extension of the contents of the treaty law, the treaty-bound states wanted an extension of this treaty law to all, or at least, to all European states. This proposal of generalization—politically hopeless because of the resistance of the not-bound states, and, particularly, of the Great Powers—was used as a means to undermine the whole treaty law, finding a climax in Colonel Beck's repudiation of 1934.

Sulkowski adds to the Paderewski arguments the powerful argument of the later 'thirties, the making of certain national minorities into fifth columns, undermining the very existence of the treaty-bound states, and reaches the conclusion that the experiment was a failure that should not be repeated. At the most international law should guarantee to the national minorities only certain fundamental human rights and "leave the task of a more specific regulation of the legal situation of the various national minorities to the interested states."

The solutions, hitherto discussed, tend to preserve the ethnic characteristics of national minorities as minorities. But in a period where nationalism, often in its most fanatic and intolerant forms, is and will be the strongest emotional force in international politics, attempts have been made or are being considered of solving the problem of minorities through their elimination.

There were attempts of eliminating minorities by physical extermination, such as the massacres of Armenians in the Ottoman Empire, the outbreak in Iraq against the Assyrian minority, the horrible extermination of Jewish minorities by National Socialist Germany in the present war. Certainly no one would dare to propose this method of solution.

There were attempts of a policy of denationalization by force, or the

methods of "assimilation" or "absorption" of minorities. The Russification policy of the Czarist Empire towards its border-peoples, the Magyarization policy of pre-1918 Hungary, the Italianization policy of Fascist Italy with regard to its German and Slav minorities are examples. This type of "solution" is, quite apart from ethical considerations, highly questionable from the point of view of practical results: nothing inflames nationalism and irredentism more than oppression.

Other attempts were made at solving the problem through annexation of the territories inhabited by national minorities by the co-national state. The irredentisms of Italy, Serbia, and Rumania are examples. This solution was part of German and Hungarian revisionism, and led to the annexation of the area of the Sudeten Germans by the Munich Agreement of 1938.

Finally, a new type of solution has recently come into the foreground: transfer or exchange of populations, voluntary or compulsory.

The precedent for the voluntary exchange of population is the Greco-Bulgarian Treaty of November 27, 1919. But the purpose of eliminating the national minorities cannot be reached by voluntary exchange. type of solution has recently been sponsored by Hitler in German treaties of 1939 with Estonia and Latvia, the treaties of 1939 and 1941 with Italy, of 1939, 1940, and 1941 with the Soviet Union, of 1940 with Rumania and of 1942 with Croatia. Most of these treaties, which envisage the transfer of German minorities in these countries into the Reich, are treaties for the unilateral transfer of a German minority: only the treaties with the Soviet Union provide for an exchange of populations. The transfer or exchange is voluntary; and yet the treaties aim at the elimination of the problem of the The Austrians in the South Tyrol were free to opt for return into the Reich or not; if they did not so opt they were protected against forcible expulsion but by not opting, they were left to the tender mercy of Fascist Italy; they were held to "deserve neither protection nor the privilege of claiming collective rights as a German minority." In the case of Germany and the U.S.S.R. the treaties are based on the theory of the "protective right of the mother state."

The precedent for compulsory exchange of populations is the Greco-Turkish Convention of January 30, 1923.⁷ This treaty was the outcome of the wish of victorious Turkey to rid herself definitively of her Greek minorities. It is well known that immense miseries were thereby caused

Wurfbain, L'échange gréco-bulgare des minorités éthniques, 1930.

⁶ J. B. Schechtmann, "The Option Clause in the Reich's Treaties on the Transfer of Populations," this JOURNAL, Vol. 38 (1944), pp. 356-374. See also H. Wachenheim, "Hitler's transfer of populations in Eastern Europe," in *Foreign Affairs*, Vol. 20, No. 4 (July, 1942), pp. 705-718.

¹G. Streit, Der Lausanner Vertrag und der griechisch-türkische Bevölkerungsaustausch, Berlin, 1929; Kiosseoglou, L'échange forcé des minorités d'après le traité de Lausanne, Nancy, 1926; Ténékides, Le statut des minorités et l'échange obligatoire des populations gréco-turques, Rev. Gen. de Droit International Public, Vol. 31 (1924), pp. 72–88.

to one and a half million Greeks who had been settled in Asia Minor for three thousand years; the problem of these Greek refugees could never have been solved by Greece, without the magnificent aid given by the League of Nations. This certainly is a very pessimistic form of solution, which brings misery to millions, which creates, in lieu of a minorities problem, an international problem of refugees. It has, therefore, been and is being condemned by the great majority of writers and by the minorities themselves. It has rightly been condemned with regard to the unilateral transfer, evacuation, or compulsory emigration, imposed by National Socialist Germany before and during the present war on millions of Europe's population.

Nothing is yet known as to whether the "Big Three" intend to maintain—or even expand or generalize—or to drop the international law for the protection of national minorities. But there are signs that, at least in certain cases, a solution by transfer or exchange of populations—the most pessimistic solution—is favored.

The Soviet-sponsored Polish Committee of National Liberation in Lublin is reported to have concluded agreements with the Governments of the Ukrainian, White Russian, and Lithuanian Soviet Socialist Republics for the voluntary transmigration of hundreds of thousands of Polish and Soviet citizens, affected by the Curzon line boundary or, generally, from each other's country. These agreements are said "to go far beyond the usual population exchange pacts to insure the protection of the best interests of those who desire to move from Poland to the Soviet Union or vice-versa."

On the other hand, proposals are made by writers for the compulsory transfer of the 3,600,000 Germans from Czechoslovakia, as well as for the removal of the millions of Germans ¹⁰ in East Prussia and Germany east of the Oder, territories promised to Poland by Stalin "by way of compensation" for taking Poland east of the Curzon line. Such a proposed solution can very well be understood psychologically; ¹¹ but it certainly is no solution in effect: ¹³ apart from human considerations, it will create an international problem of refugees; it will not prevent an irredentism; it is hardly conducive to an enduring peace in Europe.

It shows the frailty of human nature that individuals and peoples pro-

- ⁵ The New York Times, September 15, 1944, p. 5. Same, September 25, 1944, p. 6. Robert Machray, The Polish-German Problem, London, 1943.
- ¹¹ President Dr. Eduard Beneš writes: "Czechoslovakia wishes to avoid any recurrence of the situation which led to Munich. She is therefore considering the transfer of the greatest possible number of her German inhabitants. . ."; Foreign Affairs, Vol. 23, No. 1 (October, 1944) = 26
- 12 "The Nazi mentality is spreading outside of Germany. Nowadays we speak calmly of tossing millions of human beings from their homes to nowhere in order to get rid of trouble-some 'racial minorities'. Hitler set the example in the countries that came under his control, and we seem ready to do the same . . .": Gaetano Salvemini in Foreign Affairs, as cited, p. 58. Fritz T. Epstein writes that "the transfer solution, in spite of its utter disregard for human rights, is regarded more and more as the only possible way out", but states that "the whole transfer mania is an illusion": New Europe, Vol. IV, No. 6 (July-August, 1944), p. 29.

claim general principles, but see no contradiction in asking those principles applied to themselves and denied to others. Often at the international Minorities Conferences in post-1920 Europe this writer was struck by the double rôle of many peoples in Europe: accusers, where they constituted minorities; accused, where they formed the majority of the population of a state. This contradiction can now be seen even among American citizens of the same European stock. It is symptomatic that the demand for compulsory transfer of Germans from Poland was made by the Polish Labor Group at New York, whereas the memorandum presented to the President of the United States by the Polish-American Congress 13 asked for the President's assurance, not only "to defend Poland's territorial integrity" but also "to insist that not any part of Poland's population will ever be disposed of or transferred against the really freely expressed will of the Polish people."

JOSEF L. Kunz

AN APPROACH TO THE DUMBARTON OAKS PROPOSALS

Despite its progress during three hundred years, international law has hardly passed out of the stage of primitive law. With recurring world wars, and in the absence of effective organization of the Community of States, its development has been narrowly circumscribed. There was no exaggeration in the statement in "The International Law of the Future" that "as an instrument for meeting the needs of the twentieth century, it has remained lamentably weak." If there is to be any "revitalizing" of international law in this century, substantial progress in international organization seems to be an essential pre-requisite.

With the inauguration of an effort to create the "general international organization" envisaged in the Moscow Declaration of October 30, 1943, a prospect has been opened for great advances toward a stronger international legal order. That effort would have little chance of success without an initial agreement among those States which for the time being exercise the principal influence in the direction of international affairs. Hence the preliminary agreement upon the outlines of an Organization, reached by the representatives of the American, British, Chinese, and Soviet Governments in the conversations held at Dumbarton Oaks from August 21 to October 7,

13 The New York Times, October 12, 1944, p. 8.

^{1&}quot;The International Law of the Future" was published in this Journal, Official Documents Section, Vol. 38 (1944), pp. 41-139. It was published in full by the American Bar Association Journal, March 25, 1944; in 22 Canadian Bar Review (1944), pp. 277-376; and in International Conciliation, No. 399 (1944). It is also being published in book form by the Carnegie Endowment for International Peace. The black-letter text was published, in the original or in translation, in 44 Die Friedens-Warte (Geneva, 1944), pp. 131-140; in 94 Law Journal (London, 1944), pp. 211-213; in 45 Revista de Derecho Internacional (Habana, 1944), pp. 5-14; in 7 Revista Argentina de Derecho Internacional (2d ser., Buenos Aires, 1944), pp. 58-68; and in 4 Revue du Barreau de la Province de Quebec (Montreal, 1944), pp. 191-198. Summaries were published in 38 American Political Science Review (1944), pp. 354-369; and in 15 World Affairs Interpreter (1944), pp. 45-49.

1944, may prove to be an event of first importance with reference to the future of international law.

In what spirit, then, will those who are primarily interested in international law approach the "tentative proposals" made at Dumbarton Oaks, and the later development of them by the "wider conference" which is projected? Firstly, they will doubtless emphasize the overwhelming necessity of an international organization to maintain law and order in the twentieth century world. Secondly, they will appreciate the impossibility of any effective organization if any of the States which are playing principal roles in international affairs fails to participate. And thirdly, they will realize that in international negotiations there may have to be some "give" if there is to be any "take," and that it is too much to expect that every group in every country will be completely satisfied with every detail of the international agreement which may ensue.

With such an approach, hospitality will be extended to the proposals which have been made. They are not complete, and both the greater and the lesser States may still make their contributions. They are not perfect, but there may be opportunity of improving them when they are reduced to final form. It can be hoped, particularly, that international law will have more emphasis in the definitive Charter, and that the provisions for international adjudication will be strengthened to take account of recent advances. If it is thought that the proposals do not place the right emphasis in the right places, it has to be remembered that only living under an agreement may accomplish that result. Fortunately, opportunity is being widely afforded for constructive criticism.

Inevitably, any new plan of organization will be compared with what we have known in the past, and especially what we knew during the twenty years from 1919 to 1939. Yet a return to what we have had—even if we preferred it—may not be possible under existing conditions. The Covenant of the League of Nations does not now seem to present itself as an alternative to proceeding along the lines of the Dumbarton Oaks proposals. Nor is any other plan of organization before us for consideration as something upon which it is possible to get agreement. Indeed, the only alternative to Dumbarton Oaks would seem to be nothing in the way of general international organization, and that alternative is as impossible for those interested in international law as it is for all who would seek to do everything that can be done in our time which may help to prevent another world war.

Haunting memories of the contest in the United States twenty-five years ago, between those who supported the League of Nations to which responsible Governments were committed and those who preferred a league of nations of each individual's own imagining, are none too savory today. That struggle produced no improvement in the plans already adopted, but it served to hamper the shaping of the international policy of the United States

down to December of 1941. Few are those who would willingly choose to repeat that tragic experience.

MANLEY O. HUDSON

THE DUMBARTON OAKS CONFERENCE

The delegates of the United States, Great Britain, and Russia (Russia's place later being taken by China), purporting to prepare a plan to be adopted by the United Nations, convened at Dumbarton Oaks, Washington, D. C., in August and September 1944. They had a difficult task to perform. They were supposed to draw up, within a few weeks, a plan for preserving the peace of a world in turmoil, a task that has defied the efforts of sages for hundreds of years. While the delegates had before them the Covenant of the League of Nations and the lessons of its failures, they are entitled to credit for the ingenuity of many of their proposals. The plan evolved differs from that of the League of Nations in certain fundamental respects. Whether it makes any more plausible approach to the solution of the peace problem may well be questioned.

The plan, like the League, proceeded from certain assumptions: that a war anywhere is the "concern" of every nation-dangerous double talk-, that security can be guaranteed to any nation over a span of years, and that an international organization can accomplish the undertaking. These premises and goals rest exclusively on assumptions, since all efforts to apply the principle heretofore have ended in failure, if not war. The method devised for the purpose is to suppress an "aggressor," whenever such a nation appears, by sanctions and force, if peaceable measures of adjudication or ad-Even more, a "threat to" the peace will suffice to arouse the justment fail. enforcers, so that any intervention is authorized. All members, large and small, must supposedly reach agreement on the quotas and assistance to be supplied, including air forces, on call of the Organization. Members may freely be invaded by the posse commitatus and, in spite of contrary professions, appear to abandon much of their sovereignty. While no state is obliged to enter the Organization, membership is open only to those "peaceloving" states designated from time to time by the Security Council. Even non-member states (II, 6) may be coerced to comply with the principles of the Organization (assistance or subjection of their territory?).

The machinery proposed for suppression is to consist of a Security Council and an Assembly of representatives of the nations invited by the Council to become members. Only the Council determines who shall be members. In the beginning these are to consist of the United Nations only. The Council, to remain in continuous session, is to be composed of delegates of the United States, Great Britain, Soviet Russia, China, and, later, France, plus six rotating delegates of the smaller states, who are to be elected for two-year terms. Decisions of the Council, which are vital to the functioning of the Organization, are to be reached by majority vote, but, while voting power

has not been settled, it is reported that as part of that majority the Big Five must be unanimous. If one of them dissents from the designation of a particular country as an "aggressor"—an insistent demand of Soviet Russia—or presumably from approval of the type of sanctions that shall be applied, the Organization cannot act. Thus, automatically one of the Big Five, who perhaps are the main source of danger, can never be declared an "aggressor." This may—unless withdrawn—prove to be a stultifying reservation, for it would place the Big Five above the law and subject to the decisions of the Organization only the smaller Powers. What would then become of the "sovereign equality" which they profess to respect? If the small Powers. when convened, should insist on unanimity in the Security Council, as was required under the League, the Council might be even less capable of acting. Nothing, moreover, seems to prevent an individual member or members of the Big Five or other states, if agreement is not reached, from taking such action as it sees fit. If the Big Three or Five should reach agreement outside the Organization, a small target would probably be helpless. Since the possibility of agreement on such a subjectively elusive, chameleonic, and undefinable term of opprobrium as "aggressor," diminishes with the lapse of time, it will be interesting to see the effect of this provision. Nations use force as their interests at a particular time may dictate; they remain exclusive judges of such use. Each of the Big Five are afforded an easy exit, for others as well as themselves, by exercising their privilege of voting in the The proposed Organization hardly seems to enhance the protecnegative. tion of the weak.

The means of exerting the necessary force to fulfill their avowed function of "enforcing peace and security" is not the Security Council's own forcesit has only a military staff-but a call upon the men, money, and munitions placed "at its disposal" by the national governments of the Big Five and the smaller members, who must have reached a prior multilateral agreement among themselves as to the amount and degree of the forces each will supply for the common effort. Nothing is said about possible failure of agreement. The Security Council may avail itself of a standing air force (VIII, B, 6) placed at its disposal by contingents from all the members, and may use as its agents and instruments some or all of the members, including presumably their territory and armed forces. But since China and France are unlikely to send troops abroad for some time to come, and since Britain and Russia will not usually act outside their spheres of influence, it is possible that the brunt of the burden will fall on the United States. The smaller states are also supposed to agree to supply contingents, but such agreement can hardly be compelled. Members not participating in "enforcement" are to assist the belligerent "peace enforcers," but the status of non-members is left unspecified. Perhaps they may claim the rights of neutrals.

An Assembly, to meet annually, has a variety of administrative functions. It is to be composed of one delegate from each state not represented in the

Council, regardless of its size, population, or industrialization. Some of its votes are to be reached by mere majority; others, on important matters, by a two-thirds majority. The Assembly's principal preoccupation is the non-political function of the new Organization, taking over that aspect of the League's work. It may discuss and deliberate upon even political matters, but all its conclusions can be merely recommendations to the Council. expressly provided that the "General Assembly should not on its own initiative make recommendations on any matter relating to the maintenance of international peace and security which is being dealt with by the Security The Assembly may admit new members or expel old ones, but only on the orders of the Council. No provision is made for withdrawal, but if this is not to be permitted, states will hesitate to join and it is hard to see how withdrawal can be prevented, without creating hostility. Since only the Big Three are primarily entrusted with the enforcement of "peace." but may use the territory, sanctions, and quota forces of other members, and since many states are intentionally left out of the Organization, membership is not so important as it was under the League. It is not readily perceived what incentive to join a small state possesses. It would be helpful if the small states were expressly exempted from any participation in enforcement action, even possibly the use of their territory. As it stands now, they may be requested to assist in enforcement, even in the absence of a special agreement. How much greater their obligations then are than those of non-members is not altogether clear.

As an incident of its non-political functions in the humanitarian, social, and economic fields, the Assembly is authorized to elect for three-year terms a Social and Economic Council of 18 members which, under the auspices of the Assembly, is to assume responsibility through subcommittees for the specialized expert fields that are to be controlled. Since they function under the jurisdiction of the Assembly, their conclusions are probably recommendatory only. A Court of International Justice, to operate under a special Statute and to deal with legal questions, as well as a Secretariat, are reëstablished. These are useful institutions, on which even greater attention might have been focussed. The Secretary General is to be "elected by the General Assembly on recommendation of the Security Council."

The resemblance of the Organization to the League of Nations is apparent, but vital differences are to be noted. The principal ones are the vesting of unreviewable control of political affairs in the Big Five, who can never be outvoted, and to reduce the Assembly to a debating society and agency of the Council in non-political matters—although its social and economic functions are vital to the cause of international understanding. The relation among the Big Five, since they alone can effectively employ major force—though exposing smaller members to the dangers of enlistment in their enterprise—is really that of a military Alliance, on the order of the Holy Alliance and

Quadruple Alliance of Napoleon's day. Presumably each "enforcer" bears its own expenses. But instead of the "universal war" which Mr. Voigt says was authorized by the League of Nations, only a restricted number of nations, disposing of the major resources in arms, are likely to be active belligerents. How far the threat to use force will be effective to prevent war remains to be seen. If only small states are to be controlled, it looks awkward. Under the regional arrangements envisaged (VIII, C), the Organization may entrust "enforcement action" to a hegemonial state, if that suffices, with a privilege to call in the posse commitatus where resistance is great.

Notable lacunae are the failure of the Council or Assembly to act in a legislative capacity—to act prophylactically to recommend or guide change in international relations before conditions incite violence or become ripe for In its emphasis on settling disputes between states, the Organization fails to observe that the major conflicts arise not out of disputes, but out of deep-seated grievances and national policies, such as the growing economic nationalism of states that can hardly afford that luxury and thereby invite The United Nations are very loosely united, a coalition for intervention. war purposes only. Even if they remain united, outsiders have an incentive to form counter-alliances. These alliances are reportedly now forming in Europe among groups of the United Nations, and may impair the functions of members of the Organization. In emphasizing so prominently the mili tary alliance as the operative agency to enforce peace, a serious impairment of the non-political, cooperative, and economically vital features of the Organization may be implied. It has never been proved that peace can be enforced, but it has been proved that the attempt of an international organization to employ force spells its probable doom.

Apparently the draftsmen of the Dumbarton Oaks Proposals did not regard disarmament as practical or as a condition of security, for they leave this subject untouched, except for the fact that their military staff may advise the Council of the circumstances justifying a reduction in armaments. We have come a long way from the First and Second Hague Conferences, and many observers may be depressed at what may seem retrogression. No mention is made of the mandates or government of dependent peoples, possibly because some of the major colonial powers were unrepresented at Dumbarton Oaks. The terms of the peace are expressly left outside the jurisdiction of the Organization, although the workability of the Organization will obviously depend largely upon the nature of the new status quo created after the war. But the Versailles mistake of interweaving both in one document is avoided.

The administrations of the Big Five appear to leave the proposals tentative, but seem to invite acceptance by their respective legislative organs (1)

¹ Editorial "A Just Peace," in *The Nineteenth Century and After*, Vol. CXXXVI, No. 810 (August, 1944), pp. 50-61.

before the war has been ended; (2) possibly before the other United Nations have been convened; (3) although the plan is obviously incomplete, and (4) before the nature of the new status quo, the new peace which is to be "enforced," can be known. Constitutionally, the plan seems to assume that the President or his delegate, without consulting Congress, the war-making and declaring authority, can vote for the use of the American quota of armed forces, if that can be limited when the "aggressor" resists. Many questions will have to be clarified before a legislature can intelligently vote on this scheme.

EDWIN BORCHARD

MEMBERSHIP IN THE PROPOSED GENERAL INTERNATIONAL ORGANIZATION

Chapter II of the Dumbarton Oaks Proposals for the Establishment of a General International Organization first introduces into the draft the idea that the proposed Organization is not to be a universal organization of the community of states, whose Charter would be "applicable to all states as the basic instrument of international law." Instead, Chapter II, in proposing certain principles in accordance with which states should act, distinguishes between "members" of the Organization and "states not members." Rights and benefits are regarded as resulting from "membership," and obligations are to be "assumed" by states in consenting to membership. It is envisaged that all "members" of the Organization will undertake to fulfill the obligations assumed by them in accordance with the Charter; that all "members" of the Organization will be legally obligated to settle their disputes by peaceful means, to refrain in their international relations from the threat or use of force, to assist the Organization in action undertaken for the maintenance of peace and the achievement of international cooperation, and to refrain from assisting states against which the Organization is taking "preventive or enforcement action." These obligations of members are to be assumed by the "peace-loving" states, to all of whom membership in the Organization is open (Chapter III).

By implication, membership is not open to states which are not "peace-loving." Furthermore, states not members of the Organization are not legally bound by any of the principles set forth in Chapter II as legal obligations of members, although it is conceivable that non-members might be the very states whose adherence to such principles might properly be required by an organized community of states.

This conception of an international organization whose members assume new and binding obligations is, of course, traditional. However, the dead hand of a too rigid Positivist theory, the urgent need for a general international organization which can function effectively, and the fleeting opportunity of the moment all suggest a bolder theoretical approach to the fundamental problem of the basic obligations of states which compose the international community. Such an approach has been suggested by Judge

Manley O. Hudson and his associates in the Proposals for *The International Law of the Future* ¹ and in *A Design for a Charter of the General International Organization*.² In an introductory note to the latter the concept is outlined as follows:

The universality of the GIO is contemplated, not as a goal of aspiration but as a fundamental concept. All existing States would at all times be comprised in the GIO. Every State would have the general obligations to keep the peace which the Charter ordains; each State would be entitled to representation in the Assembly, though only a recognized Government of the State could accredit its representatives; no States would be encouraged to form a rival and hostile organization because of their being left out. The whole community of States would be organized in the GIO, and the Charter would be the basic instrument of the law of that community. Such an extension of international law, like some of the great extensions made in the past, could be effected by the States upon which events have placed responsibility for the future—by the United Nations and such others as may associate with them for creating the GIO.

The initial skepticism with which the writer viewed this conception has been tempered by reflection and by an examination of the Dumbarton Oaks Proposals. That this concept is not too revolutionary nor wholly unacceptable to the drafters of Dumbarton Oaks is apparent from an examination of Chapter II, par. 6 (2) of their Proposals, which reads: "The Organization should ensure that states not members of the Organization act in accordance with these principles so far as may be necessary for the maintenance of international peace and security." The assumption upon which this paragraph rests is that, although states not members of the Organization are not legally bound by obligations to settle disputes peacefully, to refrain from the threat or use of force in their international relations, or to assist in maintaining the peace, nevertheless the Organization is to compel non-member states to act in accordance with obligations which they have not assumed. Similarly Chapter II, par. 1, of the Proposals, in basing the Organization "on the principle of the sovereign equality of all peace-loving states," appears to deprive a relatively obscure and conceivably fluctuating category of non-peace-loving states of this sacred cow.

All this is revolutionary: certain states are to be compelled to act in accordance with international principles which are presumably not legally binding on them and the sovereign equality of states is to be denied them if they do not love peace. With the purposes sought to be attained by these provisions the writer has no quarrel. However, would it be any more novel for the United and Associated Nations to launch the General International Organization on behalf of the community of states as an organization which should at all times comprise all existing states, and whose Charter should be applicable to all states as the basic instrument of international law? Then, in-

¹ This Journal, Vol. 38 (1944), Supplement, pp. 91-94.

² Same, pp. 216-23.

deed, the international community of states through its Organization could formulate the basic international obligations of all states for the preservation of peace without stigmatizing some states as beyond the law. The unfortunate distinction between "members," legally bound by these stipulations, and "non-members," not so bound, could be dropped. The proposal is not a distinction without a difference; nor is it merely a matter of international legal theory. Nothing is to be gained by regarding certain existing states as living in a vacuum and not bound by the basic rules of international law generally regarded by states as necessary for the preservation of world order. Nor is anything to be gained by including in the Charter provisions for the expulsion of "members." History shows that "expelled" states continue to exist and to exert a potent influence in international relations. The attempt to punish a state by releasing it from fundamentally necessary international obligations is worse than ironical—it is a confession of failure.

That all states will at all times participate in the work of the General International Organization is not to be expected. Germany and Japan, for example, may be denied the privilege of participation for a probationary interval. Even "suspension" of a state from the exercise of any rights or privileges of participation in the work of the Organization may at times be proper. The suspended or non-participating state would, however, remain a part of the international community of states in their organized aspect, and, as such, would remain subject to the obligations of the law of the community of states.

The Dumbarton Oaks Proposals mark, in some respects, a notable advance towards the solution of a vitally important problem. The foregoing observations are offered in the hope that they may assist in a further clarification of the problem.

HERBERT W. BRIGGS

THE DUMBARTON OAKS PROPOSALS VIEWED AGAINST RECENT EXPERIENCE IN INTERNATIONAL ORGANIZATION

It is somewhat unfair to compare the Dumbarton Oaks Proposals with the League of Nations and other international organizations with well settled constitutions and long development in practice. Nevertheless these experiences provide the most pertinent standards for judging the new program. Supporters of the latter expressly claim, moreover, superiority for it over these efforts. We may justifiably, therefore, proceed to such a comparison if we bear the difference of situation in mind and also avoid any mere factional attempt to glorify one or condemn another system. We must also avoid the mistake made in 1919–1920 of assuming that the new institution in practice will be exactly the system outlined on paper, and so exaggerating the draft project's importance, at least in all its details.

¹ Green, J. F., "The Dumbarton Oaks Conversations," in *Department of State Bulletin*, Vol. XI, No. 278 (October 22, 1944), pp. 459, 465.

Only one general assumption is made to start with. This is that the world needs more extensive and better developed international organization than it has had in the past. Just how much organization and what kinds are almost entirely open to debate. All existing and preëxisting organizations have, moreover, been great mixtures of bad features and good. On this basis we take up the new Proposals.

The frank and even emphatic statement that several matters are still under consideration,² and therefore absent from the Proposals, should neither deter us entirely from examining those given nor prevent us from citing omissions. The latter include voting procedure in the Security Council, the disposition to be made of several persisting branches and services of the League of Nations and the International Labor Organization, the location of head-quarters of the new organization, the revision of treaties, withdrawal from membership, international supervision of administration of dependencies, treatment of minorities, and any commitment to disarmament,² not to mention the extensive problems of administration (personnel, direction, loyalty, etc.) on whose proper solution success of the organization will largely depend. These are all serious omissions, even the question of the seat of the organization.

The decision to invite public discussion of the Proposals in their very tentative form resembles the action taken on February 14, 1919, except that there a formal draft Covenant was available, which unfortunately exacerbated partisanship on the issue immediately. It is to be hoped that the authors of the Proposals will neither take refuge in the absence of a definite text nor yet resist criticisms too strongly as the framers of the Covenant were somewhat inclined to do, particularly President Wilson. No indications of either of these attitudes are apparent so far.

The objectives of international organization are treated in orthodox fashion in the Proposals: peace and security are placed first but international economic and social welfare is duly emphasized. The treatment of both is intensified in comparison with that found in the League Covenant although the treatment of the second subject remains on a lower level than that accorded in some other international institutions (recent international commodity agreements, for example).

It may, indeed, profitably be noted that in general there are extensive similarities between the Proposals and the League system, reaching at times absolute identity, even verbal identity. This was inevitable, normal,

- ² Dumbarton Oaks Proposals, Chap. VI, Sec. C, and Chap. XII, Note.
- ³ Though plans are to be drafted for possible adoption. *Proposals*, Chap. V, Sec. B, par. 1, and Chap. VI, Sec. B, par. 5.
- ⁴ The New York Times, February 15, 1919, pp. 1, 2.
 ⁵ Proposals, Chap. I.
- International Commodity Control Agreements, published by the International Labor Office, Montreal, 1943.
- Compare Covenant of the League of Nations, Art. VI, par. 1, with Proposals, Chap. X, par. 1, and Covenant Art. 21, with Proposals, Chap. VIII, Sec. C, par. 1.

desirable; it is a bit amusing, however, all things considered; the proposed system is today quite frequently mentioned as "the new league." It is certainly to be hoped that this aspect of the situation will not lead to partisan support or opposition for or against the Proposals and so far there have been only a few signs of this. At certain points the Proposals even reproduce some of the weaker features of the League, as in the purely diplomatic character of the Assembly and its lack of popular contact.

The new system is identified with the prospective victors in the war to an extent even greater than was the League. This may intensify the opposition to it from defeated states and render the accession of neutrals more difficult than in 1919–1920. It is impossible to denounce entirely such a founding of international organization on force, in view of many cases of state-building by compulsion in history, but in this event the builders must stay on the job, which they precisely failed to do in the history of the League. The opportunity must be seized as early as possible, moreover, to effect a transition from coërcion to voluntary support as a basis of the system, another feature of the situation neglected in the League experience.

Ex-enemy states are not, probably, to be regarded as sufficiently "peace-loving" to be taken in as members right away—this highly subjective and political test is the only standard of membership mentioned. Thus the old problem of bringing in reluctant states or keeping out those wishing to join may well be stored up again for the future. It seems that requiring membership as a term in the settlement would meet this difficulty, do no harm, and deepen the control of the situation by the new league.

On the other hand, the very strong attitude is taken that non-members shall be compelled to act according to the principles of the organization "so far as may be necessary for the maintenance of international peace and security." Obviously the successful and especially the peaceful application of such an idea will depend on the absence of any strong outside state disposed to challenge the system. This apart from the difficult legal, if not ethical, justification for such a position.

No guarantees are to be required of new members, apparently. Those stipulated for League members were never of much importance. On the other hand a somewhat fuller treatment of the question of eligibility might have been expected (dependencies? forms of government? tests for pacific policy?). The striking absence of any right of withdrawal has already been mentioned.

The emphasis on sovereignty and equality is much greater in the Proposals than in the League Covenant or League practice or the constitutions and practices of other international organizations.¹¹ The political and psychological considerations prompting these references are fairly obvious but the effect is none the less serious. On the other hand the principles—especially

⁸ Preamble and Proposals, Chap. XII, par. 2. Chap. III. Chap. II, par. 6 (2).

¹¹ Chap. II, par. 1; neither principle is so much as mentioned in the Covenant.

that of sovereignty—are contradicted in substance at numerous points.¹³ Perhaps this is the best technique for dealing with sovereignty and equality: flaunt it in words and flout it in fact; perhaps the more usual technique in international organization of saying as little about it as possible in so many words and making concessions to it only where necessary was wiser, however. No more can be said in favor of the intensification of the self-contradictory and undemocratic principle of equality of states in the direction and control of international action, nor for the tremendous preference given in fact to the element of Great Power politics in the proposed plan.

The Assembly of the new organization is to remain a debating and supervising body and not grow up to legislative status. It is also subordinated to the Security Council to a striking degree, and not merely in security matters.¹² On the other hand, it is given control of finances in the new system, it elects a majority of the Security Council and all of the Economic and Social Council, and it may act in all matters by either simple or two-thirds majorities.¹⁴ The conjecture may be hazarded that here, as in the League, the Assembly will soon come to dominate the scene. The Great Powers did not even try to stipulate for a majority in the Security Council as had the Great Powers at Paris in 1919 and this although the principle of unanimity was not stipulated in the Proposals, in regard to Council action. Perhaps they realized the futility of any such attitude, or even remembered that it had distinctly not been the smaller powers in the Assembly responsible for League failure in 1931–1939, but the Great Powers themselves.

The Security Council is to differ chiefly from the League Council, of course, in its Military Staff Committee (with possible regional subcommittees) and its possible use of force for suppression of aggression. On the other hand its powers for settling disputes, political or legal, are distinctly limited and not organized in any great detail; to utilization of the Court is not provided very specificially, though this may be merely a question of drafting.

Indeed the whole question of the place of the Court and the place of law in the new system is left rather vague. As for the first this is merely another deliberate postponement, with every intention of filling the gap later, 18 but it nonetheless leaves one somewhat uncertain concerning the nature of the treatment ultimately forthcoming. As for the second there seems to be something more general and more basic involved: all through the Proposals there is evident a lack of emphasis upon legal principles or rules, judicial decisions, and such elements. Perhaps there was a sincere desire to avoid "formal technicalities" and concentrate on peace and welfare, but the result is to emphasize greatly the political aspect of international organization at

¹² Chap. VIII, Sec. A, par. 3, and Sec. B, par. 3; Chap. XI.

¹³ See Chap. V, Sec. B, pars. 2, 4. ¹⁴ Same, pars. 4, 5, and Sec. C, par. 2.

¹⁵ Chap. VIII, Sec. B, par. 9 and Sec. C, par. 1.

¹⁶ Same, Sec. A; for an effort to spell out the implications of this Section see article by Kelsen, above, p. 58.

¹⁷ Proposals, Chap. VIII, Sec. A, par. 6.

¹⁸ Chap. VII.

the expense of law and justice. It is in this connection, incidentally, that the settlement of voting procedure in the Security Council becomes critically important. So finally for the power to submit cases to the Council (may one party take such action?) ¹⁹ and the determination of the domestic character of a question (the Proposals do not say who shall decide)²⁰: these are vital matters, not mere formalities.

The Proposals go beyond the Covenant in their provisions for an Economic and Social Council and for development of cooperation with other international organizations, something badly needed in the world today and attempted without success under the League.²¹ Again there is no legislative power given but an opportunity for accomplishing much by study, discussion, recommendations, agreement, and such methods. The provisions for close relations between Assembly and Economic and Social Council and Secretariat hold possibilities of great growth ²²—even at the expense of the Security Council.

Finally the process of amendment envisaged is relatively advanced in character.²⁸ One third of the members could see the organization made over in a sense which they did not like and against their will, and they would not, apparently, be able to withdraw but would have to stay and accept it.

In sum, the organization foreshadowed in the Proposals would be much like the League of Nations in general form and objectives, with even some of the bad points of the League perpetuated, but with notable differences in More reliance seems to be placed on the obligations of members and less on the procedure or functions of the organs of the system.24 Even the considerable powers granted for coercing recalcitrant states are largely confined to keeping the peace, leaving the states to settle other aspects of any controversy among themselves. At certain points the Proposals are more advanced,-perhaps progressive,-certainly more drastic and radical, than anything in the Covenant or League practice or general international organization: permanent membership, treatment of non-members, voting in the Assembly, sanctions, and amendments. At other points the system envisaged is more backward: limitation of membership to "states" and this on a very subjective basis; great verbal emphasis on sovereignty and equality of states; subordination of the juridical to the political viewpoint; subordination of international public opinion, often represented best by the small powers, to Great Power domination, and so on. There is, of course, still time to remedy such defects as well as make good the deficiencies mentioned That obviously is the next step to be taken.

P. B. P.

¹⁹ Same, Sec. A, par. 4; the reference in par. 2 is clearly not a submission to jurisdiction.
²⁰ Same, par. 7.

ⁿ Chap. IX and Chap. V, Sec. B, pars. 6 and 7, respectively; see study by this writer, The League and Other International Organization, Geneva Research Centre, Geneva, 1934.

²² Chap. IX, Sec. A, par. 1, and Sec. C, especially pars. 1 (a) and (e)–(g). ²³ Chap. XI. ²⁴ Chap. II, pars. 2–6; Chap. VIII, Sec. A, par. 3, and Sec. B, par. 5; Chap. IX; etc.

CURRENT NOTES

ANNUAL MEETING OF THE SOCIETY

In view of the situation created, respecting the annual meeting of the Society, by the action of the Office of Defense Transportation in opposition to all meetings whose omission would not impede the war effort, a special meeting of the Executive Council is being called for February 10 to consider the problem. Due notice will be given to all members of the conclusions reached and the arrangements resulting therefrom. Any suggestions concerning the program of such meeting as may be held should be sent before the end of February to Edgar Turlington, Chairman of the Committee on Annual Meeting, Transportation Building, Washington 6, D. C.

. E. T.

CUBAN ACTION FOR PROTECTION OF NATIONALS INJURED IN AXIS STATES

By Decrees Nos. 587 and 588, issued at Havana on February 29, 1944,¹ the Cuban Government took interesting action to protect its nationals in the matter of injuries sustained in their persons or their property as a result of the action of Axis Governments or of Governments in territories subject thereto (listed in the Decree).

The action taken resembles that taken by the United States in 1943 and (less closely) an earlier British decree. In essence it calls for a report to the Cuban Department of State of all properties held in Axis or Axisoccupied or allied countries by all Cuban nationals and residents and by corporations either of Cuban nationality or having establishments in Cuba, exception made for diplomatic personnel and persons resident in Axis territories, transients, and properties under three thousand pesos in value. Real estate, stocks and bonds, and all other rights and claims are listed by way of example. The date of January 31, 1933, the moment of coming into power of the National Socialist Government in Germany, is taken as the starting point for the action, whereas American action dated from May 31, 1943, or January 1, 1938 in the case of property damaged, destroyed, or seized between that time and the issuance of the Regulation. The Cuban decrees create a "Union of Proprietors Damaged by the Axis" for the purpose of forwarding the aims of the Decrees in question and a "Board of War Refu-

¹ Gaceta Oficial, No. 143 (March 15, 1944); texts in English translation received through the courtesy of Dr. Gustavo Gutierrez of Havana.

² United States, Treasury Department, special Regulation No. 1, as Amended, requiring reports by persons subject to its jurisdiction with respect to property in any foreign country, June 1, 1943.

² See Howard, F. C., Trading with the Enemy, London, 1943, p. 106.

gees," composed of the Cuban Prime Minister, Secretary of State, Enemy Property Custodian, and Director General for Immigration, and the Cuban Member of the Council of UNRRA. The last item reflects the declarations made in the Preamble to Decree No. 587 that the action is taken in order to cooperate with the United Nations and the American Republics and various agencies set up by them. A similar Board was established in the United States only in January, 1944.

It may be recalled that similar action was taken in connection with the treaties of peace of 1919-1921, although adequate preparations for the claims to compensation for damages to property put forward at that time had not been made; in this respect the action taken has obvious utility. It is also interesting to note the inclusion of alien residents in both the American and the British programs; there might arise serious doubts over the right of Cuba, e.g., to press against Germany the claims of a German national resident in Cuba unless such a right was exacted as a term in the peace On the social and moral and economic values of the program in its various aspects opinions may differ somewhat but it certainly constitutes a further extension of the solicitude for the individual on the part of states in their interstate relations. It must be admitted that, in spite of the Preamble to Decree No. 587, little mention is made in the body of the Decree of anything except property damages; perhaps injuries to persons can be dealt with under the "claims" mentioned in Art. IV (b) and in any case no advance listing, as in the matter of property, would be feasible here.

P. B. P.*

PUBLICATION OF PAPERS OF JOHN BASSETT MOORE

The Collected Papers of John Bassett Moore are scheduled to be published by the Yale University Press in seven volumes early in 1945. These volumes are intended to bring together virtually all of the jurist's writings except his books, including some eight items never before published. In the latter is to be included a study of over one hundred pages entitled "Peace, Law, and Hysteria," dealing with problems raised by human nature and the effects of war-time hysteria on the reign of law. As a result of financial aid from the "John Bassett Moore Fund" the volumes are to be available at a relatively low price.

A biography of Judge Moore, in the nature of a volume of memoirs, is subsequently to be published by Professor Edwin Borchard, preserving the language, notes, and recitals of the jurist as closely as possible.

P. B. P.

THE DRAFTING OF UNITED STATES NATIONALS BY GREAT BRITAIN †

In World War I a Convention between the United States and Great Britain relating to the service of citizens of the United States in Great

* With the cooperation of Dr. Fr. Schreier.

† See article by author of this note in this JOURNAL, Vol. 38 (1944), p. 50

Britain and of British subjects in the United States was concluded on June 3, 1918, and ratifications were exchanged on July 30, 1918. Under its Article I, Americans in Britain and British subjects in the United States were subject to military service under the laws of the country in which they were, unless they enlisted or enrolled within a certain time in the forces of their own country. The legal basis for giving effect to this Convention in British municipal law was the Military Service (Conventions with Allied States) Act, 1917, which was applied to nations of the United States by an Order in Council dated September 4, 1918. In the war of 1914–1918 Great Britain made similar arrangements with France, Russia, Italy, and Greece.

In World War II the problem of the compulsory military service of nationals of allied states became topical long before America's entry into the war as a consequence of the presence in Great Britain of thousands of refugees and other nationals of the then occupied countries of the European continent, and, after preliminary negotiations with the allied governments concerned, which lasted almost two years, the Allied Powers (War Service) Act, 1942, was passed.

By Order in Council dated March 11, 1943,⁵ the Act was applied to Belgium, the Czechoslovak Republic, Greece, the Netherlands, Norway, Poland, and Yugoslavia. On August 10, 1944, two further Orders in Council were made under the Act. One of them, the Allied Powers (War Service) (No. 2) Order, 1944,⁶ applies the statute to men who are nationals of the United States of America; the other, the Allied Powers (War Service) (No. 3) Order, 1944,⁷ to Frenchmen. Both Orders came into operation on September 1, 1944.

With regard to nationals of the United States the position is now as follows:

1. Contrary to the procedure adopted in World War I, the provisions regarding the drafting of United States nationals into the British forces have the outer appearance of British municipal provisions only. Introducing the Allied Powers (War Service) Bill in the House of Commons, the Joint Parliamentary Secretary to the Ministry of Labour, Mr. McCorquodale, pointed out, on June 25, 1942, that the Bill was an enabling measure "and will not in general come into force with regard to any particular Allied nationality until, in agreement with the allied nationality concerned, an Order is made applying it to persons of that nationality." There can, therefore, be no doubt that the making of the Order "was preceded by an Agreement between the British and American governments to the effect that the United States Government consented to the drafting of its nationals into the British forces and vice versa.

¹ U. S. Treaty Series No. 633; Cmd. 9101; this JOURNAL, Vol. 12 (1918), Supplement, p. 265.

² S.R.&O., 1918, No. 1105. See this JOURNAL, Volume 38 (1944), p. 56, note 46. The history of this Statute is given in this JOURNAL, Vol. 38 (1944), pp. 55-56; see also note by Hartmann, *Modern Law Review*, Vol. IV (December, 1942), p. 72.

S.R.&O., 1943, No. 381.
 S.R.&O., 1944, No. 991.
 S.R.&O., 1944, No. 992.
 Hansard, House of Commons, Vol. 380, No. 81, col. 2178.
 Almost two years later still.

- 2. Nationals of the United States who are in Great Britain, or subsequently enter it, and who at the expiration of two months from the "material date" are neither members of the armed forces of the United States, nor hold a certificate of exemption issued by the Government of the United States, are subject to the British National Service Acts, 1939–1941, as if they were British subjects. They are therefore liable to service with the British forces, if they are within the age limits specified for British male subjects by proclamation, made under the National Service Acts.
- 3. For American nationals who already are in Great Britain and fall within the age limit for British male citizens who have already been called up, the "material date" is September 1, 1944. The period within which they have an option between service in the British and service in the American forces, ends for them on November 1, 1944. In the case of Americans who were not in Great Britain on September 1, 1944, the two months are counted from the date they first enter the country. Americans who, on September 1, 1944, were not within the age limits of British male subjects, called up for military service, can opt for service in the American armed forces and must become American soldiers or airmen within two months from the date of the proclamation by which British subjects of the respective age are called up for military service. 11
- 4. The Act and the Order extend to Great Britain and to the Isle of Man.¹³ There is no conscription of British subjects in Northern Ireland and therefore none for American citizens.
- 5. The provisions apply only to male nationals of the United States. The British National Service Acts also apply to women.¹³
- 6. A certificate of exemption, issued by the Government of the United States, exempts a national of the United States from the liability to serve with the British forces while it is in force. A certificate, on the other hand, issued by the Government of the United States, to the effect that a certain American citizen is not or was not at a specified time a member of the American armed forces, is conclusive evidence of that fact.
- 7. At the time of the introduction of the Allied Powers (War Service) Bill it was declared that it was "clearly desirable that so far as possible Allied nationals should join their own national Forces, but if they do not do so, they will, at the end of the period, become liable to be called up to the British Forces. It is proposed then that they should normally be posted to the Pioneer Corps, except those who have certain specialist qualifications which can be best used in the Royal Air Force." ¹⁶

EGON SCHWELB

¹⁰ Article 1 (2)b of the Order S.R.&O., 1944, No. 991.

¹¹ Section 1 (3)b of the Allied Powers (War Service) Act, 1942.

¹² Section 4 of the Act, Article 2 (2) of the Order.

¹³ Section of the National Service (No. 2) Act, 1941.

¹⁴ Section 1 (2) of the Allied Powers (War Service) Act, 1942.

¹⁵ Section 3 (1)c of the Act.

¹⁶ Mr. McCorquodale in the statement quoted, above, note 8.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD AUGUST 16-NOVEMBER 15, 1944 (Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: B. I. N., Bulletin of International News; C. S. Monitor, Christian Science Monitor; Cmd., Great Britain Parliamentary Papers by Command; Cong. Rec., Congressional Record; D. S. B., Department of State Bulletin; Ex. Agr. Ser., U. S. Executive Agreement Series; G. B. M. S., Great Britain Miscellaneous Series; G. B. T. S., Great Britain Treaty Series; P. A. U., Pan American Union Bulletin; U. S. T. S., U. S. Treaty Series.

June, 1944

- 4-October 20 LIBERATED TERRITORIES (Capitals). List of cities in the order in which they fell from German control: N. Y. Times, Oct. 21, 1944, p. 7.
- 30 CANADA—NEW ZEALAND. Signed mutual aid agreement at Ottawa which came into force the day of signature. D. S. B., Oct. 15, 1944, p. 443. Text: New Zealand Treaty Ser. 1944, no. 2.

August

- Brazil—Paraguay. Signed a railway convention at Rio de Janeiro. D. S. B., Sept. 17, 1944, p. 307.
- 15-17 Refugees. At meeting of the 4th plenary session of the Intergovernmental Committee on Refugees in London, representatives were present from 30 governments. Sir Herbert Emerson, who was reappointed, was instructed to invite the governments of Argentina, Belgium, Brazil, Chile, Czechoslovakia, France, Poland, the United Kingdom and the United States to appoint experts to a Commission to study the question of adoption of an internationally recognized identity and travel document for stateless persons. The Commission was given power to make recommendations to governments. London Times, Aug. 18, 1944, p. 8. Rules for the constitution and procedure of the Committee: Intergovernmental Committee on Refugees. Report of 4th plenary session, August, 1944, pp. 42-50.
- 15—September 2 Pan American Conference on Geography and Cartography. 2d conference met at Rio de Janeiro with all American nations represented except El Salvador, Haiti and Nicaragua. U. S. delegates and brief summary: D. S. B., Oct. 22, 1944, p. 475.
- 16 ARGENTINA—UNITED STATES. United States halted gold shipments to Argentina. N. Y. Times, Aug. 17, 1944, p. 1.
- JEWS IN HUNGARY. United States Department of State announced that the United States and Great Britain had accepted Hungarian Government's offer to release Jews (as reported July 18 from Switzerland) and that Anglo-Americans would undertake to care for Hungarian Jews reaching neutral or United Nations' territory. N. Y. Times, Aug. 18, 1944, p. 5; D. S. B., Aug. 20, 1944, p. 175. Report of July 18: B. I. N., Aug. 5, 1944, p. 649. Text of joint declaration of August 17: London Times, Aug. 18, 1944, p. 3.
- 21-September 29 Dumbarton Oaks. Conversations on an international organization for peace and security opened August 21 in Washington. N. Y. Times, Aug. 22, 1944, p. 1. U. S., British and Russian delegations: N. Y. Times, Aug. 22, 1944, p. 8; D. S. B., Aug. 6, and 20, 1944, pp. 133 and 174. Addresses at opening session: Cong. Record (daily) Aug. 23, 1944, pp. 7303-7305; D. S. B., Aug. 27, 1944, pp. 197-202; 78th Cong., 2d sess. Senate Doc. 231; N. Y. Times, Aug. 22, 1944, p. 12.

- On Aug. 29 a joint communiqué announced agreement on an outline for a security league. Text of communiqué: N. Y. Times, Aug. 30, 1944, pp. 1, 11; D. S. B., Sept. 3, 1944, p. 233. Closed Sept. 29. Text of joint statement: D. S. B., Oct. 1, 1944, p. 342.
- 22 CZECHOSLOVAKIA (in exile)—FRENCH COMMITTEE OF NATIONAL LIBERATION. Issued a common declaration reaffirming their 1941 repudiation of the German occupation and Munich agreement. N. Y. Times, Aug. 23, 1944, p. 6. Text: London Times, Aug. 23, 1944, p. 4.
- 23/September 12 ARMISTICE (Rumanian). Rumania accepted armistice terms August 23, offered by the U.S.S.R., Great Britain and United States, in a proclamation ordering Rumanian troops to cease hostilities against the Red Army. N. Y. Times, Aug. 24, 1944, p. 1. Text of proclamation: p. 11. Signed armistice at Moscow Sept. 12. London Times, Sept. 14, 1944, p. 4. Text: N. Y. Times Sept. 14, 1944, p. 12; Cong. Record (daily) Sept. 19, 1944, pp. 8027-8029; D. S. B., Sept. 17, 1944, pp. 289-292. Summary: B. I. N., Sept. 30, 1944, pp. 810-811.
- 23-27 France (Vichy). Diplomatic relations were broken off by the following: Switzerland, Aug. 23; Sweden, Aug. 24; Portugal, Aug. 25; Turkey, Aug. 26; Vatican, Aug. 27. B. I. N., Sept. 2, 1944, p. 728. Spain, Aug. 27. B. I. N., Sept. 16, 1944, p. 776. Ireland, late in August. B. I. N., Nov. 11, 1944, p. 969.
- France (Provisional Government)—United States. Department of State and the War Department issued a joint statement, announcing that by an exchange of letters with Gen. Koenig (French), Gen. Eisenhower had put into effect this day certain agreements respecting administration of civil affairs and related subjects in continental France. Text of statement: N. Y. Times, Aug. 26, 1944, p. 5; D. S. B., Aug. 27, 1944, pp. 204-205.
- 24-November 10 France (Provisional Government) Recognition. Spanish Foreign Minister received French delegate on Aug. 24. B. I. N., Sept. 2, 1944, p. 740. Other recognitions: Cuba, Sept. 8. N. Y. Times, Sept. 10, 1944, p. 4; London Times, Sept. 12, 1944, p. 3. Soviet Russia, Oct. 23. Text of Russian statement: N. Y. Times, Oct. 24, 1944, p. 4. United States, Oct. 23. Text of U. S. statement: p. 4; D. S. B., Oct. 29, 1944, p. 491. Great Britain, Oct. 23. Text of statement for United Kingdom, Australia and Canada: London Times, Oct. 24, 1944, p. 4. New Zealand, Nicaragua, China, Brazil, South Africa, Peru, Haiti, Venezuela, Oct. 24. N. Y. Times, Oct. 25, 1944, p. 6. Sweden, Oct. 27. Spain, Oct. 31. B. I. N., Nov. 11, 1944, p. 979. Switzerland, Oct. 31. N. Y. Times, Nov. 1, 1944, p. 9. The Irish Minister was instructed the last of August to establish contact. B. I. N., Nov. 11, 1944, p. 969. Alphabetical list of 31 countries granting recognition, as of Nov. 10: Free France (N. Y.) Dec. 1, 1944, p. 437.
- 25 France (Provisional Government)—Great Britain. Signed agreement at London concerning civil administration "arrangements to be made in France, as and when, it was liberated." B. I. N., Sept. 2, 1944, p. 732. The agreement was stated to be essentially temporary and practical.
- 25/28 Paris. Final unconditional surrender was signed August 25. Text of order to German troops: N. Y. Times, Aug. 27, 1944, pp. 1, 26. The city was delivered to Lt. Gen. J.-P. Koenig, military commander of Paris, at noon on Aug. 28. N. Y. Times, Aug. 29, 1944, p. 1.
- 25/September 1 Prisoners of War. Department of State issued statements concerning transfer of funds for the relief of prisoners in the Philippines, and transport of supplies to prisoners held by Japan. D. S. B., Aug. 27 and Sept. 3, 1944, pp. 206 and 235.

- 25-September 27 WAR DECLARATIONS. Rumania on Germany, Aug. 25. N. Y. Times, Aug. 26, 1944, p. 1; London Times, Aug. 26, 1944, p. 4. Russia on Bulgaria, Sept. 5. Text of Soviet declaration: N. Y. Times, Sept. 6, 1944, p. 12; Russian Embassy. Information Bulletin, Sept. 8, 1944, p. 1. Bulgaria on Germany, Sept. 8. London Times, Sept. 9, 1944, p. 4; B. I. N., Sept. 16, 1944, p. 772. San Marino on Germany, Sept. 21. N. Y. Times, Sept. 23, 1944, p. 4. Italian Undersecretary of Foreign Affairs stated Sept. 27 Italy considers that a state of war exists between the two countries. N. Y. Times, Sept. 28, 1944, p. 6.
- 26 INDIA—UNITED STATES. Department of State announced the conclusion of "preliminary and exploratory" talks relating to postwar civil aviation. | N. Y. Times, Aug. 27, 1944, p. 9; D. S. B., Aug. 27, 1944, p. 209.
- POLISH HOME ARMY. United States Department of State issued statement recognizing the Polish Home Army as a combat force, and warning Germany it would be held responsible for any reprisals against this hitherto underground army. Great Britain issued a similar statement. Text: London Times, Aug. 30, 1944, p. 4. Text of U. S. statement: N. Y. Times, Aug. 30, 1944, p. 8; D. S. B., Sept. 3, 1944, p. 246.
- 30 United Nations Commission for the Investigation of War Crimes. Chairman of the Commission announced that a preliminary roster had been drawn up. N. Y. Times, Aug. 31, 1944, p. 8.
- 30/October 10 Was Crimes. Text of Secretary Hull's statement concerning German atrocities in Poland and warning from the Department of State to Germany against plans for extermination of Polish citizens: N. Y. Times, Oct. 11, 1944, p. 4; D. S. B., Sept. 3 and Oct. 15, 1944, pp. 235 and 428.
- 30/November 15 CZECHOSLOVAK FORCES. On August 30 the Czech Government declared all military and guerrilla detachments, as well as civilians fighting against the Germans, to be members of the regular Czechoslovak Army. London Times, Aug. 31, 1944, p. 4. Secretary of State Hull announced Sept. 7 that the United States had recognized these forces as regular combat forces to be treated according to the laws and customs of war. N. Y. Times, Sept. 8, 1944, p. 6; D. S. B., Sept. 10, 1944, p. 263. Announcement made November 15 that United States had again warned Germany on war prisoner status of Czech officers and soldiers. N. Y. Times, Nov. 16, 1944, p. 4; D. S. B., Nov. 19, 1944, p. 596.
- 31 Poland (in exile)—Soviet Russia. Premier Mikolajczyk made public his 9-point proposal for reaching an accord with Russia. N. Y. Times, Sept. 1, 1944, p. 8.

September, 1944

- WORLD WAR. Text of Gen. Eisenhower's message to the German army concerning Belgian forces of resistance: N. Y. Times, Sept. 4, 1944, p. 6.
- 4 FINLAND—SOVIET RUSSIA. Fighting ceased. N. Y. Times, Sept. 5, 1944, p. 1.
- 5 Belgium—Luxembourg—The Netherlands. Signed a customs union agreement at London. B. I. N., Sept. 16, 1944, p. 786; D. S. B., Nov. 5, 1944, p. 562.
- NETHERLANDS (in exile). Royal decree, drawn up a year ago, was made effective. It provides for administration of the country by Netherlands military authorities responsible to the civil government. N. Y. Times, Sept. 6, 1944, p. 5; Netherlands News (N. Y.) Sept. 15, 1944, pp. 200-203. The decree was published in London on August 18. B. I. N., Sept. 2, 1944, p. 736.
- 5/6 BULGARIA—GERMANY. Diplomatic relations were broken off by Bulgaria on Sept. 5.
 B. I. N., Sept. 16, 1944, pp. 771-772. Bulgaria announced Sept. 6 all German troops in the country had been disarmed and interned. N. Y. Times, Sept. 7, 1944, p. 10.

- 5/9 BUIGARIA—Soviet Russia. Announcement was made Sept. 9 of Russia's decision to grant Bulgaria's request of the 5th for an armistice. B. I. N., Sept. 16, 1944, p. 772; N. Y. Times, Sept. 10, 1944, pp. 1, 15.
- 8 Belgium. Belgian Cabinet met in Brussels, thereby becoming the first of the exiled governments to return to its homeland. N. Y. Times, Sept. 9, 1944, pp. 1, 5.
- 9 EMERGENCY ADVISORY COMMITTEE FOR POLITICAL DEFENSE. Argentine Foreign Minister announced decision to withdraw from the Committee. Text of communique: N. Y. Times, Sept. 10, 1944, p. 29.
- 9/11 France (Provisional Government). Issued a proclamation abolishing all the laws promulgated by the former Vichy Government. On the 11th another proclamation announced the "'French State' abolished with all its laws; France remained a Republic," and "legally has never ceased to exist." B. I. N., Sept. 16, 1944, p. 777.
- 9/14 Polish Committee of National Liberation—Soviet Russia. Announced Sept. 14 signature on Sept. 9 of an agreement with two Soviet Republics for the exchange, on a voluntary basis, of minority populations living in long-disputed areas. N. Y. Times, Sept. 15, 1944, p. 7; C. S. Monitor, Sept. 15, 1944, p. 1; B. I. N., Sept. 30, 1944, p. 834.
- GREEK COMMITTEE OF NATIONAL LIBERATION. According to announcement at Cairo the Committee, formed March 12, 1944, ceased to exist after the entry of the EAM and Communists into the Greek Government. N. Y. Times, Sept. 11, 1944, p. 8.
- 10 IRAQ—SOVIET RUSSIA. Established diplomatic relations. B. I. N., Sept. 16, 1944, p. 796.
- 11 Refugees. Ankara (Turkey) radio announced decision to refuse admission to military and civil refugees. B. I. N., Sept. 16, 1944, p. 792.
- 11-14 AMERICAN BAR ASSOCIATION. 67th session opened Sept. 11 at Chicago. N. Y. Times, Sept. 12, 1944, pp. 1, 23. On Sept. 13 the Association approved 3 proposals for postwar international organization of courts. Text of 3 recommendations: N. Y. Times, Sept. 14, 1944, p. 11.
- 11-16 QUEBEC CONFERENCE. Prime Minister Churchill and President Roosevelt met in Quebec to discuss plans for the defeat of Japan. Text of message from Marshal Stalin, expressing his regret for being unable to attend: N. Y. Times, Sept. 12, 1944, p. 6; London Times, Sept. 13, 1944, p. 4. Text of joint statement issued Sept. 16: N. Y. Times, Sept. 17, 1944, p. 1.
- 15/18 COSTA RICA—PANAMA. Signed Sept. 15 the "acta final" and general map, determining their common border, in dispute since 1825. Signed and exchanged formal notes Sept. 18, ratifying the boundary convention signed at San José, May 1, 1941. D. S. B., Oct. 8, 1944, pp. 390-391.
- 16-26 U.N.R.R.A. Council. 2d session opened at Montreal Sept. 16. L. B. Pearson of Canada was elected chairman. N. Y. Times, Sept. 17, 1944, p. 23. U. S. delegation: D. S. B., Sept. 10, 1944, p. 255. Voted on Sept. 18 to consider expanding its operations to include Italy. N. Y. Times, Sept. 19, 1944, p. 6. At closing plenary meeting on Sept. 26 the Council approved reports and adopted resolutions submitted by its committees on policy, procedures and displaced persons. Summary of activities: N. Y. Times, Sept. 27, 1944, p. 13.
- 17 FINLAND—GERMANY. Finnish press announced existence of a state of war. N. Y. Times, Sept. 18, 1944, p. 6.

- 18 ALLIED MILITARY GOVERNMENT IN GERMANY. Text of announcement that AMG will operate in areas occupied by Anglo-American armies and will make destruction of national socialism its chief objective: N. Y. Times, Sept. 19, 1944, p. 7.
- 19 Lebanon—United States. George Wadsworth appointed Minister to Lebanon and Syria. N. Y. Times, Sept. 20, 1944, p. 11; Sept. 21, p. 14; D. S. B., Sept. 24, 1944, p. 313. Texts of notes exchanged Sept. 7 and 8: pp. 314-315.
- SYRIA—UNITED STATES. George Wadsworth appointed Minister to Syria and the Lebanon. N. Y. Times, Sept. 20, 1944, p. 11; D. S. B., Sept. 24, 1944, p. 313. Texts of notes exchanged Sept. 7–8: p. 314.
- 19/23 Armistice (Finnish). Text of armistice signed at Moscow on Sept. 19 with Great Britain and Russia: London *Times*, Sept. 21, 1944, p. 3; N. Y. Times, Sept. 21, 1944, p. 12. [The text varies in the two sources.] Summary: B. I. N., Sept. 30, 1944, pp. 811-812. Ratified Sept. 23 by Finnish Parliament: London *Times*, Sept. 25, 1944, p. 3.
- 20 CROATIA—FINLAND. Finland broke off diplomatic relations. B. I. N., Sept. 30, 1944, p. 826; London Times, Sept. 21, 1944, p. 4.
- 20 Finland—Hungary. Finland broke off diplomatic relations. B. I. N., Sept. 30, 1944, p. 826; London Times, Sept. 21, 1944, p. 4.
- 20 FINLAND—SLOVAKIA. Diplomatic relations severed by Finland. B. I. N., Sept. 30, 1944, p. 826; London Times, Sept. 21, 1944, p. 4.
- 21/24 Belgium. Prince Charles was sworn in as Regent Sept. 21, to serve until King Leopold's return. N. Y. Times, Sept. 22, 1944, p. 4. On Sept. 24 the Regent asked M. Pierlot to form a Cabinet. B. I. N., Sept. 30, 1944, p. 821.
- 21 France (Provisional Government)—United States. President Roosevelt appointed Jefferson Caffery as representative of the United States to the de facto French authority, now established at Paris. D. S. B., Sept. 24, 1944, p. 332; N. Y. Times, Sept. 22, 1944, p. 1.
- 22 FINLAND—JAPAN. Finland broke off diplomatic and consular relations. N. Y. Times, Sept. 23, 1944, p. 5; London Times, Sept. 23, 1944, p. 4.
- SWEDEN. Announced closing of all Baltic ports and territorial waters to foreign shipping from Sept. 27. B. I. N., Sept. 80, 1944, p. 835.
- 25-October 8 Arab Conference. Opened Sept. 25 at Alexandria, Egypt. London Times, Sept. 26, 1944, p. 3. Ended sessions Oct. 8 with delegates from Syria, Trans-Jordan, Iraq, Lebanon and Egypt signing a protocol providing for creation of an Arab league. N. Y. Times, Oct. 9, 1944, p. 6; London Times, Oct. 9, 1944, p. 3.
- 26 Argentina—United States. Department of State announced ban on United States ships calling at Argentine ports after Oct. 1. N. Y. Times, Sept. 27, 1944, p. 1.
- 26 ITALY. Text of joint statement issued by President Roosevelt and Prime Minister Churchill outlining plans for diplomatic, financial and political aid to Italy through U.N.R.R.A. Text: N. Y. Times, Sept. 27, 1944, p. 6.
- 26/28 WAR CRIMES. Verbal notes were delivered to Great Britain on Sept. 26 by Argentine Ambassador informing Great Britain that war criminals would be barred from Argentina. Text of Argentine announcement of Sept. 28: N. Y. Times, Sept. 29, 1944, pp. 1, 15. Text of U. S. statement: p. 15; D. S. B., Oct. 1, 1944, pp. 339-340.

- 26/November 10 Allied Control Commission for Italy. In consequence of the Allied decision to grant more control to the Italian administration, it was announced that the name of the Commission will hereafter be "The Allied Commission." B. I. N., Oct. 14, 1944, p. 880. Announcement of Nov. 10 stated that Harold MacMillan would become president of the Commission. D. S. B. Nov. 12, 1944, p. 583; N. Y. Times, Nov. 11, 1944, p. 5.
- 28 GERMANY—UNITED STATES. Gen. Eisenhower's first Proclamation to the German people was issued. Text: N. Y. Times, Sept. 29, 1944, pp. 1, 5.
- Shipping Agreement. Department of State announced that United States, United Kingdom, Belgium, Canada, Greece, The Netherlands, Norway and Poland had signed an agreement in London on August 5, providing for the pooling of ships carrying essential supplies. The French Committee of National Liberation had indicated its ships would continue at the disposition of the United Nations. Text of agreement and annex: D. S. B., Oct. 1, 1944, pp. 358-361; G.B.M.S. No. 3 (1944), Cmd. 6556.
- SOVIET RUSSIA—YUGOSLAV COMMITTEE OF NATIONAL LIBERATION. Text of Official Russian statement on relations between the Red Army and Marshal Tito's forces: London *Times*, Sept. 29, 1944, p. 4.
- 29-October 7 Dumbarton Oaks. Second phase of the Conference opened Sept. 29, with delegations from United States, Great Britain and China. Texts of addresses by the chairmen of delegations: N. Y. Times, Sept. 30, 1944, p. 5; D. S. B., Oct. 1, 1944, pp. 342-345. Texts of statements at close of the Conference: N. Y. Times, Oct. 8, 1944, p. 32. Text of plan for an international organization: N. Y. Times, Oct. 10, 1944, p. 12; G.B.M.S. No. 4 (1944), Cmd. 6560; D. S. B., Oct. 8, 1944, pp. 368-374. Various Conference documents: pp. 365-376; Dept. of State. Conference Series, No. 56.
- FRANCE (Provisional Government). The Government announced its decision to cancel all existing commercial accords, including tariff privileges. N. Y. Times, Oct. 1, 1944, p. 13.

October, 1944

- 2 Axis Powers—Brazil. Patents owned by Axis subjects were seized, and placed under the direction of the Bank of Brazil, which has authority to transfer title to third parties if approved by the Government. N. Y. Times. Oct. 3, 1944, p. 4.
- 2 Mexican Oil. Announcement of Mexican payment in the amount of \$4,085,327.45, an installment due under the agreement reached by exchange of notes, Sept. 29, 1943, as a consequence of the expropriation of petroleum properties in Mexico. D. S. B., Oct. 9, 1944, p. 385.
- 4 BULGARIA—GERMANY. Announced from Berne that Bulgarian note to Germany charged Germany violated rights of man and the Hague Convention by forced induction of Bulgarians into the German armed forces. N. Y. Times, Oct. 5, 1944, p. 8.
- 4-November 15 War Crimes. Department of State announced despatch of notes to neutral countries requesting adoption of measures to prevent enemy governments and individuals retaining their loot under neutral protection. Great Britain took similar action. N. Y. Times, Oct. 5, 1944, p. 1. Text of U. S. statement: p. 4; D. S. B., Oct. 9, 1944, pp. 383-384. On Nov. 15 the Department of State made public Irish memorandum which stated the Government found no legal basis for plea to bar Axis refugees. Text of Irish memorandum: N. Y. Times, Nov. 16, 1944, p. 3; D. S. B., Nov. 19, 1944, p. 591.

- 5 BELGIUM—GREAT BRITAIN. Signed financial agreement confirming the existing rate of Belgian francs to the pound. N. Y. Times, Oct. 6, 1944, p. 7. Main points: London Times, Oct. 6, 1944, p. 4. Comment: p. 9. Text: Belgium no. 1 (1944) Cmd. 6557. The new agreement abrogates the financial agreements of June 7, 1940 and of Jan. 21, 1941. D. S. B., Oct. 29, 1944, p. 526.
- 8 CANADA—Great Britain—Soviet Russia. Signed protocol for compensation by Russia of Canadian interests in the Petsamo nickel mines, ceded to Russia by Finland. B. I. N., Oct. 28, 1944, pp. 939–940.
 - 8 ITALY. Appointed diplomatic representatives to Turkey, Spain, Portugal and Sweden. B. I. N., Oct. 14, 1944, p. 881.
 - 9-18 CHURCHILL—STALIN CONFERENCE. Text of communiqué issued at close of meetings at Moscow: N. Y. Times, Oct. 21, 1944, p. 5.
- Transport Conference. International conference on European Inland Transport opened at London. U. S. delegation: D. S. B., Oct. 22, 1944, pp. 480-481. Convened to discuss arrangements for transport in continental Europe after liberation of territories of the United Nations and the occupation of enemy territories. 12 countries participated with the Danish Minister in London sitting as an observer. B. I. N., Oct. 28, 1944, p. 930.
- CANADA—Great Britain—United States. President Roosevelt issued Proclamation no. 2626 respecting criminal offenses committed by armed forces of Canada and the United Kingdom within the United States. D. S. B., Oct. 22, 1944, p. 481. Text of proclamation: 8 Federal Register 12403.
- 11/28 Armistice (Bulgarian). On Oct. 11 Bulgaria accepted preliminary armistice conditions from the Allies. N. Y. Times, Oct. 12, 1944, pp. 1, 13; London Times, Oct. 12, 1944, p. 4. Bulgaria announced withdrawal of troops from Greece Oct. 12. N. Y. Times, Oct. 13, 1944, p. 8. Bulgaria signed an armistice with the United Nations at Moscow on Oct. 28. N. Y. Times, Oct. 28, 1944, pp. 1, 11. Text: N. Y. Times, Oct. 30, 1944, p. 5; D. S. B. Oct. 29, 1944, pp. 492-494. A protocol to the armistice was also signed. Summary of armistice terms: London Times, Oct. 30, 1944, p. 3. Corrigenda regarding armistice terms: D. S. B., Nov. 19, 1944, p. 616.
- 15-16 Armistice (Hungarian). Admiral Horthy announced Oct. 15 he had asked the Allies to grant an armistice. N. Y. Times, Oct. 16, 1944, p. 1; London Times, Oct. 16, 1944, p. 14. Text of Horthy's armistice appeal: N. Y. Times, Oct. 17, 1944, p. 9. An order of the day (Oct. 16), allegedly signed by Horthy, revoked armistice proclamation: p. 1. Horthy was deposed Oct. 16, and M. de Szalasi was installed. London Times, Oct. 17, 1944, p. 4.
- AVIATION. British Government issued White Paper outlining its policy for the regulation of postwar air transport. Text: Cmd. 6561; London Times, Oct. 18, 1944, p. 2.
- 17/November 9 IRAN—Soviet Russia. Soviet press announced Iranian Government had refused Soviet proposal for the immediate granting of a concession for the exploitation of oil deposits in northern Iran. N. Y. Times, Oct. 18, 1944, p. 10. Iranian Cabinet resigned Nov. 9. N. Y. Times, Nov. 10, 1944, p. 7. Summary of reasons for Iranian refusal: London Times, Nov. 2, 1944, p. 4; B. I. N., Nov. 11, 1944, pp. 975-976.
- 18 Allied Military Government in Germany. Code for control of Germany during the war period announced. Summary: N. Y. Times, Oct. 19, 1944, pp. 1, 10.

- 18 GERMANY. Text of decree for the organization of the Volkssturm, which will include all men between 16 and 60, able to bear arms: N. Y. Times, Oct. 19, 1944, p. 9. In the meaning of the Army Law the Volkssturm's members will be soldiers during their term of service. Excerpts: London Times, Oct. 19, 1944, p. 3.
- 19 GREECE. On the day following return to the capital, Premier Papandreou presided at first meeting of the Cabinet in Athens since the German occupation in 1941. N. Y. Times, Oct. 21, 1944, p. 8.
- 23-27 AVIATION CONFERENCE. Delegates from eight countries of the British Empire held an informal and exploratory conference at Montreal. London Times, Oct. 24, 1944, p. 3; N. Y. Times, Oct. 24, 1944, p. 12. Delegates from the United Kingdom: London Times, Oct. 23, 1944, p. 5. Summary of meeting: N. Y. Times, Oct. 28, 1944, p. 13.
- 25 Great Britain—Italy. Resumed diplomatic relations. N. Y. Times, Oct. 26, 1944, p. 1.
- 25 ITALY—UNITED STATES. Decision by United States to resume diplomatic relations. N. Y. Times, Oct. 26, 1944, p. 1; D. S. B., Oct. 29, 1944, p. 491.
- 25/27 ITALIAN RECOGNITION. Granted by Chile and Cuba on Oct. 25, and by Nicaragua on Oct. 27. N. Y. Times, Oct. 26 and 28, 1944, pp. 10 and 7.
- NORWAY (in exile)—Soviet Russia. Text of King Haakon's broadcast to Norway regarding operations of Russian troops on Norwegian soil: London *Times*, Oct. 27, 1944; p. 4.
- 27-November 1 Foreign Ministers of the American Republics Consultative Meeting. Argentine Foreign Minister announced that Argentina had sent a memorandum to all the Republics demanding a meeting. N. Y. Times, Oct. 28, 1944, pp. 1, 7. Text of Argentine memo: p. 7. The bid was referred Nov. 1 to the American Republics by the Governing Board of the Pan American Union. N. Y. Times, Nov. 2, 1944, p. 10.

November, 1944

- 1-December 7 AVIATION CONFERENCE. International Civil Aviation Conference opened at Chicago on Nov. 1, with more than 50 countries represented. N. Y. Times, Nov. 2, 1944, p. 1. Text of President Roosevelt's message: p. 11; D. S. B., Nov. 5, 1944, p. 529. Text of invitation to the Conference: D. S. B., Sept. 17, 1944, pp. 298-299, 305. On Oct. 29 Russia rejected invitation to attend because of the expected presence of delegates from Switzerland, Portugal and Spain, countries maintaining a pro-Fascist policy, according to Russian claims. N. Y. Times, Oct. 30, 1944, pp. 1, 6. Text of Russian statement: London Times, Oct. 30, 1944, p. 4. U. S. delegation and secretariat: D. S. B., Oct. 29, 1944, pp. 498-499, 525. Mr. Berle's address of Nov. 2 outlined United States policy. Summary: N. Y. Times, Nov. 3, 1944, p. 5. Text of statement issued Nov. 5 by the Latin American bloc of nations: N. Y. Times, Nov. 6, 1944, p. 8. 51 nations signed Final Act on Dec. 7. N. Y. Times, Dec. 8, 1944, p. 17. The Final Act, adopted Dec. 5, includes a Convention providing for a permanent organization to be named the International Civil Aviation Organization. There is also an agreement for an interim council, pending ratification of the permanent convention. Summary of agreement: N. Y. Times, Dec. 6, 1944, p. 18.
- 4 CHINA—ITALY. Italian Government announced Chinese decision to resume diplomatic relations. N. Y. Times, Nov. 5, 1944, p. 20.
- 4 France (Provisional Government)—United States. Text of French note inviting President Roosevelt to visit Paris: D. S. B., Nov. 5, 1944, p. 536.

- 4/7 SOVIET RUSSIA—SWITZERLAND. Russia announced refusal to resume diplomatic relations. N. Y. Times, Nov. 5, 1944, p. 32. Swiss Foreign Minister resigned Nov. 7. N. Y. Times, Nov. 11, 1944, p. 3.
- 6 Japan—Soviet Russia. In an address Premier Stalin named Japan and Germany as typical aggressors, urged creation of a special postwar armed organization, empowered to act to "avert or suppress aggression." Text: N. Y. Times, Nov. 7, 1944, p. 8; Russian Embassy. Information Bulletin, Nov. 14, 1944, no. 117, pp. 1-5.
- 7 Guatemalan Recognition. Granted by United States and other American Republics. N. Y. Times, Nov. 8, 1944, p. 18.
- 8 BULGARIA—TURKEY. Announced resumption of commercial relations. N. Y. Times, Nov. 9, 1944, p. 9.
- 8-9 FRENCH CONSULTATIVE ASSEMBLY. Met in Paris on Nov. 8, and elected Felix Goupin president of the Assembly. N. Y. Times, Nov. 9, 1944, p. 15; London Times, Nov. 9, 1944, p. 3. Gen. de Gaulle pledged early elections and restoration of Republican institutions. N. Y. Times, Nov. 10, 1944, p. 12.
- Belgian Gold. Announcement that French Government had signed an agreement with Belgian Central Bank to pay back to the Belgian Bank 230 million francs deposited with the Bank of France before the war, and which fell into German hands at Dakar. N. Y. Times, Nov. 10, 1944, p. 5.
- POLISH BOUNDARY. Announcement made of Polish Government's refusal to accept settlement of its eastern boundary without a comprehensive agreement embodying other points in its dispute with Russia. N. Y. Times, Nov. 10, 1944, pp. 1, 7.
- 10-18 Business Conference. The International Business Conference, held under the auspices of the American Section, Chamber of Commerce of the U. S. A., National Foreign Trade Conference and National Association of Manufacturers, met at Rye, N. Y., with 500 participants from 52 countries. N. Y. Times, Nov. 11, 1944, p. 20.
- EUROPEAN ADVISORY COMMISSION. Announcement of invitation to the French Provisional Government to full membership on the Commission. D. S. B., Nov. 12, 1944, p. 583; London Times, Nov. 13, 1944, p. 4.
- GERMANY—Sweden. Announcement made of Swedish protest against German threat to cut Swedish shipping routes with Finland and Russia, as contained in military communiqué of Nov. 9. N. Y. Times, Nov. 12, 1944, p. 30.
- OPIUM. Afghan Foreign Office confirmed the Government's decision to prohibit the cultivation of the opium poppy plant from March 21, 1945. This decision was reached in conformity with the invitation from the United States to opium-producing countries to limit production to strictly medicinal and scientific purposes. D. S. B., Nov. 26, 1944, p. 629.
- TRAVEL REGULATIONS. Department of State declared 9 countries open to civilian travel, without requirement of military approval. N. Y. Times, Nov. 12, 1944, p. 22; D. S. B., Nov. 12, 1944, p. 584.
- 13 Axis Powers—Costa Rica. Costa Rican Congress passed a law entitling Costa Rican prisoners of war or civilians interned in Germany and Japan to an indemnity to be paid from Axis resources, held by the Alien Property Custodian. N. Y. Times, Nov. 14, 1944, p. 7.
- 14 Mexico—United States. Signed protocol supplementary to the treaty of Feb. 3, 1944, relating to utilization of waters of the Colorado and Tijuana Rivers and of the

- Rio Grande. By its own terms the protocol is made an integral part of the treaty. D. S. B., Nov. 19, 1944, p. 616. Text: 78th Cong., 2d sess. Ex. H; Cong., Rec. (daily), Nov. 24, 1944, p. 8478.
- ANDOBRA. Announcement of despatch of French policing troops to the small republic, in which order is maintained jointly by co-princes, the French Chief of state and the Spanish Bishop of Urgel. N. Y. Times, Nov. 16, 1944, p. 5.
- 20 DUMBARTON OAKS. Text of questionnaire and chart issued by the Department of State to show structure of the proposed international organization: N. Y. Times, Nov. 21, 1944, p. 4; D. S. B., Nov. 26, 1944, pp. 631-635.

INTERNATIONAL CONVENTIONS

EDUCATIONAL AND PUBLICITY FILMS. Buenos Aires, Dec. 23, 1936. Ratification deposited:

Ecuador. Oct. 20, 1944. D. S. B., Nov. 12, 1944, p. 585.

INTER-AMERICAN AUTOMOTIVE TRAFFIC. Washington, Dec. 15, 1943.

Ratification deposited:

Nicaragua. Aug. 31, 1944. D. S. B., Sept. 10, 1944, p. 284.

Signature:

Chile (with reservations) Oct. 27, 1944. D. S. B., Nov. 12, 1944, p. 585.

INTER-AMERICAN INSTITUTE OF AGRICULTURAL SCIENCES. Washington, Jan. 15, 1944. Promulgation:

United States. Sept. 8, 1944.

Ratification deposited:

United States. July 5, 1944.

To enter into force: Nov. 30, 1944. D. S. B., Sept. 10 and Oct. 8, 1944, pp. 284 and 386. Signature:

Venezuela (with reservations) Oct. 10, 1944. D. S. B., Oct. 22, 1944, p. 481.

PRISONERS OF WAR. Geneva, July 27, 1929.

Ratification deposited:

Venezuela. July 15, 1944 (effective Jan. 15, 1945). D. S. B., Oct. 1, 1944, p. 361. Red Cross. Geneva, July 27, 1929.

Ratification deposited:

Venezuela. July 15, 1944 (effective Jan. 15, 1945). D. S. B., Oct. 1, 1944, p. 361. Sugar Production & Marketing. Protocol. London, Aug. 31, 1944.

Signatures: Australia, Belgium, Brazil, Cuba, Czechoslovakia, Dominican Republic, Haiti, Netherlands, Peru, Philippine Islands, Poland, Portugal, South Africa, Soviet Russia, United Kingdom and United States (with reservations). D. S. B., Oct. 29, 1944, p. 526.

This Protocol prolongs for one year from Aug. 31, 1944 the Protocol, signed at London, July 22, 1942.

Thade Mark and Commercial Protection Convention and Protocol. Washington, Feb. 20, 1929.

Denunciation:

United States. Sept. 29, 1944 (effective Sept. 29, 1945). D. S. B., Oct. 15, 1944, p. 442.

WHALING. Protocol. London, Feb. 7, 1944.

Ratification deposited:

Canada. Aug. 24, 1944. D. S. B., Sept. 17, 1944, p. 307.

WILDLIFE PRESERVATION IN THE WESTERN HEMISPHERE. Washington, Oct. 12, 1940. Ratification deposited:

Ecuador. Oct. 20, 1944. D. S. B., Nov. 12, 1944, p. 585.

JUDICIAL DECISIONS KANSAS v. MISSOURI

SUPREME COURT OF THE UNITED STATES*

[May 8, 1944.]

Boundaries between states in rivers follow the middle line of the main navigable channel thereof; gradual changes of this line result in displacement of the boundary in accordance therewith while sudden changes have no such effect.

Mr. Justice Rutledge delivered the opinion of the Court.

Kansas brings this original suit against Missouri to have determined their common boundary from the mouth of the Kaw or Kansas River northwardly, over a distance of approximately 128 miles, along the channel of the Missouri river to its intersection with Kansas' north boundary line.

At the time of Kansas' admission to the Union, January 29, 1861, the western boundary of Missouri followed the thread of the Missouri River, that is, the middle line of its main navigable channel, between these points. This line then became the common boundary of the two states. The bill of complaint was filed in 1940. It alleged that the thread of the stream had shifted frequently, sometimes suddenly, sometimes gradually, and that these changes had caused controversies concerning the true boundary. When the proceeding began it was in dispute at a number of places. But during pendency of the suit the parties have settled all differences except one. This relates to the section of the boundary in the Forbes Bend region.

After the filing of the suit a master was appointed. Extensive hearings were held. Both documentary and oral evidence was presented. The master has filed his report, which makes findings and conclusions in favor of Missouri. Kansas says these are contrary to the law and to the weight of the evidence.

- The land in dispute consists of about 2,000 acres. This now lies on the Missouri side of the river toward the lower end of Forbes Bend. Kansas claims this land was at one time soil accreted to the Kansas bank, which an
 - * No. 9, Original. October Term, 1943.
 - ¹ Cf. Missouri v. Kansas, 213 U. S. 78; Missouri v. Nebraska, 196 U. S. 23.
- ² Act of Admission of Kansas, 12 Stat. 126; Kansas Constitution of 1859, Charters and Constitutions of the United States, Part I, 629, 630.
- ³ The complaint alleged disputes over the line at points along the river between War Department Survey Stations 399 and 405, at other points in Atchison County, Kansas, and at points along the river between War Department Survey Stations 510 and 515 (Forbes Bend).
- ⁴ Attempts at settlement by negotiation had been authorized by Kansas before this proceeding was begun (Laws of Kansas, 1939, c. 355). Apparently they were unavailing, and this suit was instituted. After it was begun, however, the parties agreed to a settlement with respect to all areas but this one and incorporated it in this record. It will be made part of the decree.

avulsive change in the course of the main channel has put back on the Missouri side; or, in the alternative, that the tract formed as an island on the Kansas side of the main channel and, as a result of a sudden shift in that channel to the other side of the island and the drying up of the old course, it has become physically attached to Missouri. In either event, Kansas urges, it follows that the boundary remains at the center of the river's former main channel. Missouri denies that the land accreted to Kansas, that there was avulsion, or that the island ever lay on the Kansas side of the main channel.

The states are not in dispute about the applicable law. They agree that when changes take place by the slow and gradual process of accretion the boundary moves with the shifting in the main channel's course.⁵ Likewise, they agree that a sudden or avulsive change in that course does not move the boundary, but leaves it where the channel formerly had run.⁶

However, the parties are sharply at odds over the facts and the conclusions to be drawn from the evidence. In view of this and since we think the facts as presented by the evidence are conclusive of the controversy, it becomes necessary to sketch them and to refer to portions of the evidence in order to give an understanding of the issues and the basis for our conclusions.

Ι

Forbes Bend lies between Doniphan County, Kansas, and Holt County, The disputed boundary, according to the master's findings, extends along the main channel of the river as it now flows for a distance of about five miles bending southeasterly from Channel Mileage Station 515 to Station 510 (as measured and marked in 1890). As the river enters Forbes Bend from the north it flows east of south. Near the point of entrance it is joined by Wolf Creek. This comes into the river from the Kansas side in an easterly direction. The mouth of Wolf Creek is roughly adjacent to Station 515. From this point the Kansas bluffs swing in a gradual convex curve southeasterly until they reach a point above Station 510. On the Missouri side the bluffs run, as they do on the Kansas side, generally south. Throughout the Forbes Bend region the distance as the crow flies from the Kansas bluffs to the Missouri bluffs is four miles more or less. Adjacent to and parallel with the Missouri bluffs, but between them and the river, lie tracks of the Burlington Railroad.

The Missouri River is a vagrant, turbulent stream. Its name reflects this character. The Big Muddy is said to carry more silt than any other river except the Yellow River in China. It is constantly changing its course within the region between its bluffs, shifting from side to side as natural forces work upon its flow. Expert testimony is that a change of conditions

⁵ Jeffries v. East Omaha Land Co., 134 U. S. 178; St. Clair County v. Lovingston, 23 Wall. 46; Nebraska v. Iowa, 143 U. S. 359.

Nebraska v. Iowa, 143 U. S. 359; Missouri v. Nebraska, 196 U. S. 23; Oklahoma v. Texas, 260 U. S. 606.

in one bend produces changes as great, or nearly so, in the next bend below.

The river flows around a big bend, known as Wolf Creek Bend, just before it reaches the mouth of Wolf Creek. Here it runs almost due south. It is conceded by all that in 1900 the river flowed southeasterly in a single channel from the mouth of Wolf Creek, hugging the Kansas bluffs throughout the entire course of flow to Station 510. As it presently flows, the river makes a wide arc, first to the left or Missouri bank in a course almost due east or north of east, before it turns sharply to the south again at a point midway between the bluffs, and follows this southerly course until it strikes the old main channel at the Kansas bluffs above Station 510. This bend now is in the form of a bow, with the river proper forming the bow and the old channel along the Kansas bank its string. Roughly, therefore, the difference between the present flow through Forbes Bend and the flow in 1900 is the difference between the bow and the string. At the center of the bow the distance between the old channel and the present one appears to be at most one mile.

However, as will appear, the channel's present location results from more complex changes than merely a movement of the river north and east over the distance lying between these two channels. According to the greatly preponderant though not undisputed evidence, there was a division of channels in Forbes Bend from about 1914 or 1917 to 1927 or 1928. During this time the more westerly or Kansas channel lay slightly west of where the present channel runs. The Missouri or easterly channel lay on the other side of the area in dispute, which then formed part of a bar or island. At one time, probably about 1922 or 1923, during the period of greatest erosion of the Missouri bank, this channel came within half a mile or less of the Burlington tracks. The Missouri channel, with the river above it, then followed a course almost due east or slightly north of east from below the mouth of Wolf Creek to the point of its closest approach to the railroad. Then it swung sharply to the south and in a curving line came back to join the original channel near the Kansas bluffs above Station 510.

From the recital thus far it is clear that in 1900 the land which then lay where the disputed track now lies was Missouri land. This is undisputed. Likewise, the tract now is attached to Missouri on the easterly bank of the river. This is because the Missouri channel dried up during some five to eight years beginning around 1927 or earlier. But, before that process began, for many years the land in question lay between the two channels. And it is from conflicting views concerning whether, how and when these major changes took place the parties derive their respective claims to sovereignty over this soil.

Kansas first claims that the land in dispute became hers by accretion. Her principal theory is that beginning in 1900 and during a period extending to 1917 or to 1927 the river channel, due to changes upstream, gradually moved

out from the Kansas bluffs over a distance of some three to three and a half miles to the north and east. As Missouri soil thus was being cut away, it is said the land in question was built up gradually on the Kansas side. In any event, if it was not connected firmly to the Kansas shore it was separated only by narrow and irregular chutes and sloughs, not by any sort of regular channel. Then either in 1917 or in 1927 ice jams forming in the river caused it suddenly to leave its channel near the Missouri bluffs and to open a new one near where the present channel runs. Relying upon accretion from 1900 to 1917 or 1927 for acquisition of the disputed area, Kansas relies upon avulsion in 1917 or 1927 to prevent losing the area again to Missouri. Her alternative theory of island formation is relied on in case that of accretion and avulsion fails on the proof. By this, the island formed on her side of the main channel and the subsequent shift of the main flow to the Kansas channel and drying up of the Missouri channel did not affect her jurisdiction.

Missouri meets all of Kansas' claims with denial on the facts. She says first that the land in question has been at no time accreted soil of Kansas. On the contrary, she claims that the disputed area formed as an island in the river bed beginning about 1910 or 1912, and from then until 1927 or 1928 there was a divided flow around this island, a Missouri channel running north and east of it with a Kansas channel to the south and west. She insists that the Kansas channel always remained the main channel of the stream and only a minor one reached proximity to the railroad tracks. Accordingly, she says the island formed as Missouri land and always remained Missouri territory. Missouri thus opposes her view of island formation, both to Kansas' view of that process and to her claim of accretion and avulsion.

However, Missouri adds a further argument even if the Kansas theory of accretion is conceded. According to this, the effect of the accretion to the Kansas bank is counteracted by the fact that at no time was there an avulsive change, whether in 1917 or in 1927. On the contrary the river moved back gradually as it came. In this view the accretive process working against Missouri ended in 1923 or 1924, when the Missouri channel reached greatest proximity to the railroad tracks. Beginning in those years and continuing

- ⁷ Since Kansas claims avulsive change both in 1917 and in 1927, and that the accretion began about 1900 or shortly thereafter, her claim necessarily implies that the period of accretion extended either from 1900 to 1917 or from 1900 to 1927.
- ⁸ At that time, according to this claim, the main channel of the river flowed through the so-called Missouri channel to the north and east, but was suddenly changed by the ice jam back from that channel into a chute on the Kansas side. This chute previously had cut across the allegedly accreted land a little to the west of where the present channel now lies. The complaint alleges that the ice jam occurred "on or about February 1918." The scanty testimony in the record if completely accepted would establish the ice jam in 1917 rather than in 1918; cf. note 24 infra.
- ⁹ The complaint alleges that the ice jam occurred "during the year 1927." The witnesses who testify to the jam at this time date it variously in 1927, 1928 and 1929; cr. note 25 infra.

gradually until 1933 or 1934, the river moved slowly back to a point beyond the location of the present channel. Thus purporting to follow the accretion theory in both directions, Missouri claims the land in question.

It may be noted that crucial to Kansas' case, whether on her theory of accretion and avulsion or on that of island formation, is the need for showing that the main channel followed the course of the Missouri channel.

II

Roughly the history of the Bend, for our purposes, may be divided into three periods, namely, from 1900 to 1917; from 1917 to 1928; and from 1928 to 1940, when this suit was begun. There is documentary evidence as well as oral testimony for the period prior to 1900. There is little or no documentary evidence in the form of maps, photographs, drawings or other materials from 1900 to 1923. There is a considerable amount of documentary material from 1923 on.

Perhaps the most important documentary item is a map of the Forbes Bend region compiled from the field in 1923 by the United States Engineer Office at Kansas City, designated as complainant's Exhibit 46 in this record. Another map of considerable assistance, with information penciled on it by two witnesses who testified at the hearings, is complainant's Exhibit 47. This purports to show in less detail than Exhibit 46 conditions in the Bend in 1926. The witnesses' penciled additions, placing channels and other landmarks, with their testimony, give considerable information about conditions in the Bend from 1921 or 1922 on to 1926 and later. Assistance also is derived from complainant's Exhibit 56. This is an aerial survey photograph of the Forbes Bend region made in 1941, showing conditions when this suit was begun. Reference to these exhibits will be made as the testimony of some of the witnesses is referred to.

It is clearly established that sometime around 1900, fixed by some older witnesses variously as beginning earlier and by others later, the river began a northerly and eastward movement, cutting away the Missouri bank and filling in on the Kansas bank. Neighborhood testimony attributes the beginning of this movement to some change in conditions upstream, taking place apparently around the mouth of Wolf Creek or in Wolf Creek Bend above. Whatever this change may have been, it apparently threw the current of the stream against the solid rock formation on what is known as Lookout Mountain. This is a point on the Kansas bluffs about a mile or a mile and a half below the mouth of Wolf Creek. The current, striking this rock with force, was thrown over to the north or Missouri bank.

The soil composition of the north bank is a common formation in the Missouri River valley. Underneath the surface soil is sand or quicksand.

¹⁶ C. McWilliams (1892); P. Dyer (1898); C. Hudgins (1900); J. H. Simpson (1904); J. E. Simpson (1905).

¹¹ Cf. testimony of L. F. Stalcup.

This is covered by a layer of gumbo soil. Testimony in the record discloses there is no great erosion when the water is very high or very low. But when it is at an intermediate stage the water comes in contact with the underlying sand, washes it out, and the topsoil falls into the river in great chunks, often twenty feet long by ten feet wide. As the current was forced from the Kansas rock to the Missouri sand, it under-cut more and more of the Missouri Evidence in the record also shows that between 1900 and 1920, or a little later, from 4000 to 5000 acres of Missouri soil was washed into the river by this process. On this stood houses, barns, a school building known as the Baker schoolhouse, and other structures, which either went into the river as the soil was undermined or were moved to prevent their falling in. The Baker schoolhouse, which in 1900 was a mile or more northeast from the river bank, was moved about 1915 to prevent its going into the river. By that time the erosion was moving at great speed and this continued until the farthest point was reached, a half mile or less from the Burlington railroad, about 1923 to 1925.18

The clear weight of the evidence is that there was only a single channel of the river until about 1912 or 1914. Witnesses for both Kansas and Missouri substantiate this. The evidence also clearly establishes that there was a divided flow from 1917 or earlier to 1927. This too is substantiated by both Kansas and Missouri witnesses. The evidence, however, is conflicting concerning when the division first took place and whether, while it remained, the Kansas channel or the Missouri channel was the main one.

Witnesses for Missouri, and some for Kansas, testify that the division occurred before 1917 and that the two channels remained substantially equal or the Kansas channel was the larger in the volume of water carried between the time of the division and sometime between 1922 and 1927 or 1928. The Missouri witnesses fairly uniformly agree that the flow in the two

¹² Witnesses vary as to the exact time from 1910–11 to 1916 (J. H. Peret: 1910–12; Mrs. S. Jenkins: 1910–12; R. E. Simpson: 1913; C. McWilliams: 1912–13; C. Harper: 1915; C. Hudgins: 1915; B. Hudgins: 1916; E. McCoy: 1915). But most of them put this event in 1912 or later, and the most reliable testimony, by those who moved the building (C. Hudgins and B. Hudgins), places it in 1915 or 1916.

¹³ McWilliams (1924-25); E. McCoy (1922); A. H. Murray (1922-23); Ralph Dyer (1923-24); W. Metcalf (1917); cf. E. A. Cole (1923, 1928).

14 Varying dates are given for the time at which a divided flow was first noted.

Kansas witnesses: I. Muse: 1900; L. F. Stalcup: 1910-1911; J. E. Simpson: 1912-13, 1917; O. McKay: 1917; R. E. Simpson: 1918; C. Baskins: 1917; C. W. Ryan: 1917 or 1919; J. McKay: 1920.

Missouri witnesses: D. Barbour: 1903; B. Hudgins: 1914; C. Harrison: 1914; Ralph Dyer: 1913–14; C. Harper: 1915; A. H. Murray: 1915; H. H. Hall: 1916; W. Metcalf: 1916; J. Fitzgerald: 1917; Raymond Dyer: 1917–1918.

 15 See note 14 supra. A few Kansas witnesses maintain there was only one channel through this period.

¹⁶ See note 14 supra. Kansas' witnesses testified variously that there always had been a channel on the Kansas side, that it was swifter than the Missouri channel (J. H. Simpson), that the Kansas channel was the "main river" (Mrs. J. Coufal), that the Kansas channel was

channels was at least "fifty-fifty" and some of them say the Kansas channel always carried the heavier volume of water.¹⁷ They also generally agree that the Missouri channel began to decrease and the Kansas channel to increase in volume at some time before 1927. Some place the beginning of this process as early as 1921 or 1922.18 The evidence is substantial that the decrease in the Missouri flow and the increase in the Kansas flow began before 1927 and it is almost unanimous that from 1928 on the Missouri channel contained no current or only the flow of Mill Creek Drainage Ditch, which by that time had been diverted into the Missouri channel. Witnesses for Missouri attribute a substantial portion of the filling up of the Missouri channel to deposits made by the Mill Creek Ditch.19 They agree, and the evidence for Kansas hardly contradicts this, 20 that between 1928 and 1934 the Missouri channel almost completely dried up. The great preponderance of the evidence as a whole is that this occurred gradually over a period of years, varying according to different witnesses from two or three to eight or ten years.

On the other hand, Kansas witnesses are not in accord among themselves as to what occurred in the Bend between 1912 and 1928. Some of them say there was a divided flow.²¹ Others deny this but qualify their denials by asserting that, although the main channel of the river ran over into Missouri close to the Burlington tracks until 1927, there were chutes on the island and particularly there was one chute running from about the mouth of Mill Creek Ditch as it was in 1917 (directly across northerly from the northern end of the bar or island) due south to the Kansas bluffs at about Station 510.²² However, they maintain generally that this was a small chute, or smaller than the Missouri channel, at any rate up to 1922 or 1923. A few say it was small until 1927, when the alleged ice jam occurred.²³

much the larger in 1918 (R. E. Simpson), that most of the water was on the Kansas side in 1920 (P. Bottiger); cf. C. B. Caton, that the river was just about evenly divided in 1917 (C. Baskins). Missouri witnesses said that there was always a substantial flow in the Kansas channel and that it was about as large as or larger than the Missouri channel (e.g., Ralph Dyer, B. Hudgins, C. Dinwiddie, J. Fitzgerald, C. Harper, Raymond Dyer). They placed boats in the Kansas rather than the Missouri channel (E. McCoy); in 1918 (W. L. Moore); 1916 to 1929 (H. H. Hall); and in 1927 (C. Hudgins).

- 17 See note 16 supra.
- ¹⁶ W. Metcalf: 1917; W. L. Moore: 1918; C. Dinwiddie: 1920-22; C. Harrison: 1921; J. Fitsgerald: 1923-1925; cf. P. Bottiger: 1920.
 - 19 J. Fitzgerald, E. Wales, J. H. Peret (Kansas witness); cf. E. McCoy C. Harper.
- ²⁰ E. g., J. H. Gray: 1928 et seq., A. F. Hays: 1926 et seq., J. B. Gray: 1927–30; G. Atkinson: 1929–after 1934; J. H. Peret: 1929–33; C. Coufal: 1929–33; C. W. Ryan: 1928–31; some Kansas witnesses claim the drying up of the Missouri channel was a sudden concomitant of an ice jam in 1929 but add that the Missouri channel contained water until 1933 or 1934 (e.g., C. Coufal, E. A. Cole), or 1935 or 1936 when it dried up as a result of government diking and revetment work upstream (e.g., J. Coufal).
 - ¹¹ See note 14 supra. ¹² E. g., A. F. Hays, C. Coufal, K. Brownlee, K. Robinson. ¹³ E. A. Cole, J. Coufal. Cole is a Kansas claimant to ownership of part of the disputed

land. Coufal once worked for him.

Some witnesses for Kansas maintain that there were big ice jams in 1917 and in 1927.2 Different witnesses testify to the two alleged jams. Those who say one occurred in 1917 assert that it threw the main flow back from the Missouri channel into the Kansas channel. Likewise some of those who say there was a jam in 1927 accredit the same consequence to that The two Kansas theories of avulsion therefore are entirely inconsistent, though each is supported by some evidence. If there was avulsion in 1917, there hardly could have been avulsion, on this record, in 1927. the other hand, several Kansas witnesses, familiar with the territory during one or both of the two years in question, testify they saw no ice jams in those years. to Others say they saw ice but not in large or unusually large quantities or with unusual effects on the flow of the river.27 Nearly all of the Missouri witnesses deny that there were ice jams either in those years or at other times, although some refer to ice in the river as not uncommon in winter or early spring. The Missouri witnesses are fairly unanimous in saying that at no time had ice conditions or others caused a sudden change in the river's course 28 and in this they are supported by a number of Kansas witnesses. 29

When we turn to complainant's Exhibit 46 we find very substantial support for Missouri's view that during the controverted period the flow of the river was divided and that the Kansas channel equalled or exceeded the Missouri channel in the flow or volume of water carried. This map, compiled by the Corps of Engineers of the United States Army, who had charge of the river's development, shows conditions in 1923. Two channels appear, with a large sand bar or island between them. The map places the Missouri channel within less than a half mile of the Burlington tracks. It shows a width of about 1250 feet at the narrowest point. Soundings, read from the south end of the island around the curve to its north end, disclose that the deepest water ran from point to point as follows: 15 feet, 16 feet, 25 feet, 13 feet, 14 feet. On the westerly side of the island the Kansas channel was a little wider at its narrowest point. Its soundings from south to north at appropriate intervals were 31 feet, 12 feet, 12 feet and 13 feet. souri channel meandered from the south to the east and north and then back around the north end of the island or bar in a due westerly direction. On the other hand, the Kansas channel was much shorter, running straight north from the south end of the island along its western shore to its northern

²⁴ C. Baskins: 1917; J. E. Simpson: 1917; P. Dyer: 1917; C. Dyer.

E. A. Cole: 1929; C. Coufal: 1929; J. Coufal: 1929; Mrs. J. Coufal: 1929; E. L. Rockwell: 1927; I. Overstreet: 1927; H. W. Linville: 1927; P. Dyer: 1927 or 1928. Mrs. Coufal, however, testified the "main river" was on the Kansas side of the island at that time. In this respect her testimony flatly contradicts that of her husband and Cole.

²⁶ D. Baskins, J. Kotsch, R. E. Simpson, J. H. Simpson, W. Prusman, G. Atkinson.

²⁷ I. Muse, L. F. Stalcup; cf. A. P. Staver.

²⁸ C. Hudgins, V. Harrison, C. Dinwiddie, R. L. Greene, W. Metcalf, E. Wales; cf. E. McCoy, H. H. Hall, D. Barbour.

²⁰ Cf. note 20 supra; J. Kotsch, W. Prusman, C. McWilliams.

end. The map shows that the higher portion of the island was covered with willows and a small part at the lower end was under cultivation. Furthermore, it is significant that at the north end of the island, just opposite the mouth of Mill Creek Ditch, the water in the Missouri channel was comparatively shallow.

Exhibit 46 furnishes the most reliable evidence in the record of conditions in Forbes Bend at a given time. If only this exhibit and the facts it discloses were considered, clearly it could not be ruled that the main navigable channel of the river was the Missouri channel. For purposes of navigation, the Kansas channel was much the shorter and more direct and, from the soundings as well as the shorter flow, it apparently carried at least an equal volume of water.

Exhibit 47, which is described as a revision from airplane photographs, shows in general a somewhat similar though less detailed picture for 1926. However, two witnesses for Kansas, Kenneth Robinson and Joseph H. Gray, who hunted in the region from 1920 to 1927 or 1928, testified concerning this exhibit and marked on it in penciled lines their recollections of the channels' respective courses in 1922. Their testimony gives perhaps the strongest support to Kansas' case that the main channel during a portion of the disputed period was on the Missouri side. But, apart from its inconsistency as to the location and direction of the Kansas chute, to does not accord with the more reliable evidence given concerning conditions in the Bend at the same time by complainant's Exhibit 46 and it is contradicted by numerous witnesses for Missouri as well as by some for Kansas in allocating a larger flow to the Missouri channel. It cannot therefore be accepted as controlling.

Ш

The evidence need not be stated in further detail. In our opinion it fully supports the master's ultimate findings and conclusions. It was his view, first, that there was no avulsive change, whether in 1917, 1927, or at any time. He found there was some evidence of an ice jam in 1917 and more to substantiate such a claim for 1927. But he also found, and the evidence, though not undisputed, fully substantiates his conclusion that neither of these jams was sufficient to cause a sudden change in the river's course.

³⁰ They agreed that the Missouri channel flowed around the island not far from the Burlington tracks, turning south at that point and flowing against the Kansas bluffs at Station 510. They also agreed that the Kansas channel was a chute. But they differed concerning its direction and location. Robinson placed it as running almost due south across the center of the island in a straight course. Gray placed the Kansas chute more to the west and with a curving course. Both testified that the Missouri channel was the main channel at that time. The inconsistency between Exhibit 46 and the testimony and drawings of Robinson and Gray may be accounted for in part, though not altogether, by the fact they were in the Bend for hunting and fishing purposes, chiefly in the fall, whereas Exhibit 46 was made from surveys in June and July. The difference in time, however, is hardly enough to account for the difference either in width or depth of the Kansas channel as shown by the exhibit and by their testimony.

There is very considerable doubt, on the record as a whole, whether the alleged jam in 1917 occurred at all. In any event, the preponderant evidence is that it amounted to little, if anything, more than the normal piling of ice on the heads of bars and islands during the spring breakup.²¹ There is evidence that this occurred each year. The proof therefore to sustain avulsion in 1917 is not sufficient and this phase of the case may be put aside.

We agree with the master that the evidence to show a more unusual piling up of ice at the head of the island in 1927 is somewhat stronger. But we also agree with him that the evidence as a whole is clearly preponderating that this did not cause an avulsive change. As has been stated, there is some evidence that the alleged 1927 jam caused the main channel of the river to shift then and suddenly from the Missouri channel to the Kansas channel as the latter flowed from 1927 or 1928 until the government's revetment work on the river forced the channel to its present location after 1935. But this is not enough to sustain Kansas' case.

Both by virtue of her position as complainant and on the facts, Kansas has the burden of proof in this case. Cf. Oklahoma v. Texas, 260 U. S. 606. The disputed location was in Missouri in 1900. It lies on the Missouri side now and has done so, by practically all the evidence, since at least 1927 or 1928. These facts put upon Kansas the burden of showing that in the meantime the land lay on the Kansas side of the main channel by virtue of natural changes which were effective to change the jurisdiction. Kansas has shown beyond doubt that one branch of the river eroded to a point or points north and east of this land, probably as early as 1920, possibly earlier. But beyond this fact, whether on her theory of accretion and avulsion or on that of island formation, the weight of the evidence is against her view of what occurred.

Kansas' main difficulty perhaps is that by attempting to prove one theory of what happened in Forbes Bend she divides the weight of her evidence and thus goes far to disprove her other theory. To show accretion and avulsion she was required to prove that the river's main channel moved gradually from the Kansas bluffs in 1900 to the farthest erosion point in Missouri in 1927, and then suddenly shifted back to a new channel cut then through the middle of the accreted soil, leaving the old one from that time on a minor or dry one. To show sovereignty by island formation it was necessary to prove that the island formed on the Kansas side of the main channel, in which event a subsequent shift in the main flow to the other side of the island would not affect her jurisdiction, 33 although Missouri's alternative contention seems to be to the contrary. 34 By proving the formation of the island, Kansas in

²¹ Cf. notes 27-29 supra. ²² Cf. note 25 supra.

²² Missouri v. Kentucky, 11 Wall. 395; Davis v. Anderson-Tully Co., 252 Fed. 681 (C. C. A.); Commissioners v. United States, 270 Fed. 110 (C. C. A.).

^{*}Missouri apparently urges that even if the land formed as an island on the Kansas side, the process by which the main channel shifted from the eastern to the western channel and the former gradually filled with alluvial deposits thus connecting the island to the Missouri shore, entitles it to sovereignty over the disputed lands.

effect disproves that the disputed area became accreted soil attached firmly to the Kansas bank. Her own evidence in this respect, added to that given by Missouri, far outweighs the evidence she presented to show accretion beyond where the present channel lies and creates an overwhelming preponderance that the flow was divided from 1912 or at any rate 1917 to 1927 or 1928; that the island formed in this period; and thus that the soil in question was not at any time attached firmly to the Kansas bank by accretion. If it was formed as island soil, it was not accreted soil.

Kansas' evidence concerning the division of flow and formation of the island, together with that concerning the drying up of the Missouri channel, also proves not that the river suddenly cut a new channel through accreted soil in 1927, but that it merely shifted the volume of flow from one channel to another preexisting one. In other words it goes to disprove both accretion and avulsion. Missouri and Kansas witnesses are agreed that the main flow was in the Kansas channel from 1927 on and there is substantial agreement that by 1933 or 1935 the Missouri channel had dried up, except for the flow of Mill Creek Ditch, and largely had filled up by deposits from that stream and other forces. Missouri witnesses say this drying up began before 1927, some as early as 1922 or 1923, and therefore continued for ten or twelve years. Kansas witnesses generally say it began in 1927 and continued for from three to seven or eight years. Only a few of them say the ice jam that year cut a new channel. More testify that the main flow then shifted from one channel to the other, and some join the witnesses for Missouri in saying that this shift began earlier. Except for the few witnesses who testify to the sudden cutting of a new channel, the great weight of the testimony is that whatever change occurred in reduction of the flow in the Missouri channel required several years to complete. It was a gradual process, and therefore not the sudden shift necessary to show avulsion. We need not decide what the effect would be if the evidence had shown this was a gradual cutting of a new channel. It was at most a gradual shifting from one to another. Kansas clearly has failed to prove that there was a single channel of the river which gradually moved over to the farthest erosion point, meanwhile accreting this land to her soil, then suddenly moved back, either in 1917 or in 1927, to a new channel cut through the accreted soil. Only by accepting the evidence given by the few witnesses who supported this theory, which was contradicted both by the weight of her own evidence concerning island formation and by substantially all that was offered for Missouri, could a finding in Kansas' favor be made under the thory of accretion and avulsion.

Kansas' stronger case upon the proof is on the theory of island formation. On this, as under that of accretion and avulsion, it was necessary for her to show that the Missouri channel was the river's main channel and thus the island, which is now part of the disputed land, was formed on her side of the river's thread. On this crucial issue Kansas' case is stronger perhaps than in

any other respect. She presented substantial evidence to show that while the river was divided or during some part of that period, more especially from 1921 or 1922 to 1927, the Missouri channel was the main one, both in volume of water carried and, less clearly, in availability for navigation. There is, however, at least an equal weight of evidence, given both by Missouri witnesses and by some for Kansas, that the Kansas channel remained the main navigable channel throughout the period of division.

The evidence on this controlling issue unfortunately is not as free from conflict or doubt as we might wish. But it cannot be said, when account is taken of all the evidence, both oral and documentary, that a preponderance sustains Kansas' view that the main channel ever changed to the Missouri side. Kansas' burden required preponderant proof. She has not made it.

As the case has been made, both the master and this Court have had to rely upon the inadequate and inconclusive documentary evidence and the conflicting and often vague recollections of neighborhood witnesses. The sum does not add up to the weight of proof Kansas was required to establish in order to prevail. The master saw and heard the witnesses. His conclusions in all respects were in favor of Missouri. We find no basis in the record for any conclusion that he performed his task with other than fair, disinterested, painstaking effort and attitude. His judgment accords with the conclusions we make from our own independent examination of the record. It is not necessary for us to decide more than that Kansas has failed to show that the main channel of the river shifted at any time in question from a course such as the river now follows, or one slightly closer to the Kansas bluffs, to one following the course of the Missouri channel when the flow was divided.

It follows the land in dispute must be awarded to Missouri and the boundary will be fixed as the master has recommended in his report. A decree will be entered accordingly.

BOOK REVIEWS AND NOTES

Legal Effects of War. By Sir Arnold Duncan McNair. Cambridge: Cambridge University Press, 1944 (2d ed.). Pp. xx, 416. Indexes. \$6.00.

This second edition of a book published by the author in 1920 preserves only the title and, chiefly in an appendix, a few of the 168 pages of the first edition. The author has, between the dates of the two editions, worked steadily and with great distinction in the field of international law. His study of the legal effects of war is still made, however, primarily from the point of view of the civil status of alien enemies under the law of England. He concludes that the principles of this branch of the law were established well and truly during the war of 1914 to 1918 and have for the most part merely been applied and underlined by the decisions of the present war (p. vii).

In his first chapter the author considers the technical meaning of the word In the second he summarizes the British law of nationality and describes in general terms the position of aliens who happen to be in Great Britain at the date of the outbreak of war. In the third, a long chapter of forty-two pages, he formulates, substantiates, and qualifies three general rules as to the procedural capacity of alien enemies. The forty pages of Chapter 4 are devoted to the general principles applicable to contracts other than those involving impossibility and frustration. Chapter 5 briefly describes the status of enemies with respect to suits for torts, the holding, acquisition, and disposition of property, and domestic relations. Chapter 6, another long chapter, thirty-seven pages, discusses the doctrine of frustration of contract in the light of the decision of the House of Lords in the case of Fibrosa Spolka Akcyjna vs. Fairbairn Lawson Combe Barbour Ltd., 1 "one of the few cases of first-rate legal importance" that have arisen during the present war. Chapter 7 briefly reviews the common law and the statutes with reference to trading with the enemy. Chapters 8 to 16 are concerned with affreightment, agency, bills of exchange and promissory notes, building and shipbuilding contracts, the position of corporations, employment and guarantees, insurance, leases and tenancies, partnerships, sale of goods, and solicitors' retainers.

The chapters which will be of most interest to students of international law are the last three. Chapter 17, pages 319 to 354, deals with the effects of belligerent occupation of territory; Chapter 18, pages 355 to 383, with the effects of acts of wholly or partly dispossessed governments and Chapter 19, pages 384 to 402, with the effects of peace treaties upon private rights. Each of these chapters contains a summary of the pertinent public international law as well as a discussion of both English and American leading cases.

The American citations include Anderson v. N. V. Transandine Handel-maatschappij and Others, The State of the Netherlands Intervening, in which a decree of the Netherlands Government in London, purporting to nationalize cash and securities of Dutch individuals and corporations domiciled in occupied Holland, was upheld on grounds of comity. The English citations include the case of V/O Sovfracht v. N. V. Gebr. Van Udens Scheepvaart en Agentuur Maatschappij, in which the English common law position on the effects of residence or domicile in enemy-occupied territory was, according to the author (p. 325), examined and authoritatively established by the House of Lords.

The book is useful for reference but is primarily for reading and orientation. It is written in the lucid and engaging style which those familiar with other writings of the author would expect from his pen.

EDGAR TURLINGTON

Of the Board of Editors.

A Guide to the Law and Legal Literature of Cuba, the Dominican Republic and Haiti. By Crawford M. Bishop and Anyda Marchant. Washington: The Library of Congress, 1944. Pp. ix, 276. Index. \$1.75.

This volume is the first of a new series of guides to the law and legal literature of Latin American republics prepared under the auspices of the Law Library of the Library of Congress. The three countries here covered are among the oldest settlements in the New World and, in their long history, many different governments have succeeded one another. Each change has brought important modifications and the body of the laws in each country represents a complex structure.

The guide introduces us to important compilations of the statutes, to court reports and digests, and finally to legal commentaries contained in books and periodicals. Bibliographies are contained in the notes. The text is presented clearly, but the arrangement of the headings and the sequence do not follow any very scientific classification. A notable characteristic of the three countries is the attention paid in recent times to labor legislation. The land laws seem to be peculiarly complex in some instances. For example, the Dominican Republic has progressed from the so-called peso titles to the Torrens system, adopted in 1920. However, judging from the numerous essays written within the last few years on the need for reform of land registration, it would seem that the Torrens law has not been put to much practical use.

The book will be an invaluable guide for English-speaking lawyers and publicists. It is regrettable to have to record the recent death of John T. Vance, the late Law librarian, who was to have prepared a foreword, and also

¹ 28 N.Y.S. 2d 547. Affirmed by the New York Court of Appeals in an opinion printed in this JOURNAL, Vol. 36 (1942), pp. 701-707.

^{1 (1943)} A.C. 203.

of Guy H. Lippitt, who read the manuscript relating to the Dominican Republic and Haiti. Students of Latin American law will remember both with gratitude for their valuable contributions in this field.

ARTHUR K. KUHN

Of the Board of Editors.

International Law Documents, 1942. Washington: Government Printing Office, 1943. Pp. iv, 155.

This Edition of the annual publication of the Naval War College contains 32 documents, of which 27 are reprinted from the Department of State Bulletin. The remaining 5 documents are likewise reprinted from United States sources (laws, proclamations, Congressional Hearings, treaties). There are statements by American officials on war prisoners, lend-lease, poison gas, crimes against civilian populations, political arrangements with Darlan, capture of prizes, trade with Spain, the raising of legations in Latin America to embassy rank, etc. The texts of the treaty with China ending extraterritoriality, the British-U.S.S.R. treaty of alliance, and several other international agreements are reproduced. A reprinting of the Final Act of the (Hot Springs) United Nations Conference on Food and Agriculture occupies one-third of the volume. The basis of selection employed in compiling these documents for naval officers (Preface, iii) is not apparent to the reviewer.

HERBERT W. BRIGGS

Of the Board of Editors.

Peace Through Law. By Hans Kelsen. Chapel Hill: University of North Carolina Press, 1944. Pp. xii, 155. Annexes. Index. \$2.00.

In this little volume Professor Kelsen puts forward two theses: (1) that peace can and must be guaranteed by compulsory adjudication of international disputes, and (2) that peace can and must be guaranteed by individual responsibility for violations of international law. Part II of the work seems secondary in importance to Part I.

The argument of Part I may be summed up in the main as follows: (1) peace must be maintained by a combination of force and law; (2) at present no world state is possible but only a confederation of states; (3) establishment of obligatory submission of all international disputes to international adjudication is "absolutely" indispensable to the maintenance of peace and this end is actually attainable at the end of the present war; (4) the legal aspect of the international problem is to be contrasted with its economic and political aspects in the sense that it is much more important than they, that it can be dealt with separately, and that its solution would render the other aspects of the problem unimportant; (5) international executive and legislative machinery and activity are distinctly secondary to international adjudication in both importance and evolutionary position; (6) the dis-

tinction between legal and political disputes is entirely subjective in character and the idea that international law fails to cover all aspects of international relations is false; (7) conciliation may usefully be employed in international disputes but only subject to the other principles here set forth; (8) obligatory adjudication can be reconciled with "sovereign equality" or state sovereignty; (9) experience under the League of Nations sustains these contentions. Annex I contains a draft Covenant taking account of these principles.

This reviewer regrets to have to disagree fundamentally and strongly with his friend and former colleague Professor Kelsen on propositions (3), (4), (6), and (9) while agreeing warmly with propositions (1), (2), and (8) and mildly with (5) and (7). He feels entirely free to register his partial dissent inasmuch as it will—rightly—not in the least deter students of the problem from reading this brilliant essay nor in the least detract from the world reputation of the master.

This is no place in which to enter into protracted argument on all of the different aspects of the problem. The reviewer will content himself with two observations.

He would call attention to the balanced, moderate, and mellow wisdom of the Preface and of sections (1) and (2) in contrast to the extreme statements and extravagant argumentation of sections (3)-(6). In the latter are to be found various assertions which seem somewhat open to debate, to put it mildly. ["We may expect that Soviet Russia too will join . . . a court with compulsory jurisdiction" (p. 15); "all the difficulties . . . in international economic relations originate almost exclusively in the possibility of war" (p. 16); "Disarmament is (was) to form the first duty of the Members of the League" (p. 51).] A utopian scheme for election of the international court by judicial and academic bodies is put forward also. Such an attitude in itself raises serious questions concerning the soundness of the case presented.

Secondly it seems that proposition (6) constitutes in large measure the heart of the whole case and that this proposition is false. If there are disputes which are objectively non-legal in character because the relations or questions involved are not regulated by positive law then the basis is pretty well removed from point (3), which is decisive for the whole program. Now Professor Kelsen does indeed maintain vehemently, when arguing the point directly (p. 26), that quantitatively positive international law covers the whole field of international relations, even utilizing the old idea that what the law does not forbid it permits, which can mean no more, carefully analyzed, than that what the law does not forbid it does not forbid, rather than that it positively authorizes such and such a thing. In at least three other places, however, Professor Kelsen says things which indicate that subconsciously he retains the opposite (and, it is believed, sound) view. Thus: "A matter is 'solely' within the domestic jurisdiction of a State only so long as it is not subject to a norm of . . . international law" (implying that it is possible for

an individual item to be not so subject) (p. 33); "There is . . . a . . . difference between a judicial decision applying a . . . preëxisting rule of positive law . . . and a . . . decision applying a . . . not-preëxisting rule, thus altering the existing law" (a very useful procedure, often, but fatal to the contention that existing law already covered the whole ground) (p. 47).

It seems to the reviewer that it is much more practical politically, as well as sounder scientifically, and much more promising, to build international peace on gradual extension and perfection of procedures now well on their way to fruition than to try to achieve a millennial revolution based on highly debatable history and theory, even inspired by the greatest idealistic zeal. He would give to international law and adjudication just as large a place as can properly and possibly be obtained for them in the maintenance of international law and order but he would not admit that nothing can be done without their perfect development nor would he be too optimistic over the possibilities of such development. It also seems terribly obvious that the use of force for the prevention or termination of aggression can no more be made contingent on prior judicial decision than police action to prevent and suppress actual violence in the local community can be made so dependent, but must, as there, be left in the hands of executive and administrative officials, with adequate provision of regulations governing such action and of judicial recourse for correction of administrative measures in excess of authority and to inculcate caution on the part of the police before they act.

With the main argument and most of the detailed points of Part II (individual responsibility under international law, punishment of offenses against that law, international criminal jurisdiction in general) this reviewer is in warm agreement, in spite of the misgivings of his conservative colleagues, although he would feel that jurisdiction in such matters should be conferred on one or more special tribunals and not on the Permanent Court of International Justice.

P. B. P.

American University.

Coercion of States: in Federal Unions. By Harrop Freeman and Theodore Paullin. Philadelphia: The Pacifist Research Bureau, 1943. Pp. 68. 25¢.

Coercion of States: in International Organizations. By Harrop Freeman.
Philadelphia: The Pacifist Research Bureau, 1944. Pp. 57. 25¢.

These two pamphlets, part of a Series of "Studies in the Use of Force," are published by the Pacifist Research Bureau, an agency representative of religious pacifists. While these studies are based on the religious conviction that human endeavor must be directed toward a world brotherhood based on coöperation, not on force, they do not profess to present religious arguments at all, but "material that will stand up under the most critical scrutiny," in "adherence to the standards of sound scholarship."

To sum up: these pieces of research by the Pacifist Bureau deserve the respect due to every sincere and honest conviction; but this respect is rather due to the approach than to the execution for the execution is not well done.

JOSEF L. Kunz

Of the Board of Editors.

The Time for Decision. By Sumner Welles. New York: Harper & Bros., 1944. Pp. vii, 431. Appendix. Index. U. S. War Aims. By Walter Lippmann. Boston: Little Brown & Co., 1944. Pp. xii, 235. Appendices.

The views of these two distinguished writers upon the character of the international organization to be established after the war and the part which the United States must play in relation to it must be of great interest to students of international law. Both writers are men with a long record of public service, the one in the field of governmental policy and the other in the field of journalism. Their views, therefore, reflect a practical as well as an ideological approach to the problem. In essentials the two writers are in accord. They both look to the creation of an international organization whose primary function must be the maintenance of law and order in the international community and whose secondary function must be the promotion of international coöperation in the economic and social relations of states. They differ, however, in the methods by which their general purposes would be attained, and their differences have a direct relation to the nature and future development of international law.

Should peace be maintained in the international community by an organization of a universal character, in which the individual members would be represented in their separate capacities as independent states, or by an association of regional groups within each of which the member states would adopt a common foreign policy, settle their local disputes among themselves and rely for their security and defense upon the peaceful adjustment of interests between the groups themselves? Could possible conflicts between the regional groups be best avoided by adopting a code of international conduct which would thereafter be enforced as the law of the community, or would it be better to provide for a system of consultation in the presence of particular problems, leaving it to public opinion of the time to decide the issue without being bound by specific rules? These alternatives are perhaps stated more sharply than the views of the two writers warrant, but they mark in a broad way the differences in their points of approach to the problem.

Mr. Lippmann is of the opinion that the peace can best be maintained by a four-power alliance which should form "the nucleus around which order can be organized." This would necessitate the establishment of regions formed of the nations having a common interest in defending the region against attack from without. Small states within the given region would be

obliged to give up the right to follow individual foreign policies, but in exchange they would receive the protection of the regional group. Local disputes between members of the regional group would be settled among themselves. Problems of a general character would be dealt with in a world council but the deliberations would be conducted between regional communities, not by separate sovereign states. "The universal society would be the association of the great communities of mankind," the Atlantic Community, the Russian Orbit, the Chinese Community, and possibly at a later date, an East Indian and an Arabian Community. Differences between the regions themselves, if any should arise, would be settled by the procedure of consultation, and it would be left to the mutual interest of the parties to find a peaceful solution when the time came.

Mr. Welles presents a plan more in line with the existing traditions of international law, although at the same time stressing the advantages of the development of regional systems, of which the inter-American system offers the best example. These regional systems might be made responsible at first for maintaining peace and composing differences among their members: but the ultimate responsibility for law and order would fall upon the uni-The universal organization itself would be established versal organization. on the basis of direct relations between the individual states in their separate corporate character. An interesting feature of the provisional executive council is that in addition to the four members designated by the four major Allied powers, two members would be chosen by the group of European states, two by the group of American states, one by the group of Far Eastern states; one by the group of states of the Middle East and of Africa; and one This method of regional representation would, by the British Dominions. the author believes, prevent any trend towards regional antagonism and any tendency to use the regional systems for the aggrandizement of an individual power.

Having in mind the changing conditions of international life and the undesirability of attempting to pledge the great powers in advance to defend the status quo under unknown circumstances, Mr. Lippmann is averse to the formulation of rigid rules of international law, preferring to leave it to consultation between the regional groups to find the appropriate solution for a particular problem. Mr. Welles on the contrary insists upon the recognition on the part of the international organization of clear and specific obligations, which should be known in advance and enforced upon proper occasion as the law of the community.

Both volumes contain acute observations upon other aspects of the international situation. Reference is made here merely to the attitude of the two writers towards the problem of primary interest to students of international law.

C. G. FENWICK

Of the Board of Editors.

The Battle Against Isolation. By Walter Johnson. Chicago: University of Chicago Press, 1944. Pp. xii, 270. Index. \$3.00.

The ghost of the Senate fight against the participation of the United States in the League of Nations has not yet been laid. A small group of isolationist Senators still form a nucleus which with the aid of the Chicago Tribune and kindred organs may block the path of the organization stemming from Dumbarton Oaks just as a similar group after the First World War sabotaged our entrance into the League of Nations. Professor Walter Johnson in this brief volume gives a graphic presentation of the fight of a group of embattled patriotic anti-Fascist Americans to combat the defeatist propaganda of the isolationist bloc. This fiercely fought war of ideologies extended from the outbreak of the Second World War in September 1939 to the attack on Pearl Harbor in December 1941.

The hero of this effective fight to give aid to the Allies was William Allen White, and the study revolves about the tempestuous role played by the Kansas editor. In making his survey Professor Johnson had access to Mr. White's letters and to the files of the Committee to Defend America by Aiding the Allies. He also had much firsthand information furnished by the various leaders of the movement, such as Clark Eichelberger and John A. Morrison.

The narrative shows the leading part played by the Committee to Defend America by Aiding the Allies, headed by William Allen White, in bringing about the exchange of fifty destroyers for the strategic naval bases in the Atlantic and Caribbean. In this instance the Committee brought public opinion to support the exchange so strongly that President Roosevelt was able to make the deal under an executive agreement instead of working through the Congress. Incidentally, the Committee also obtained the service of the ablest international lawyers to meet the charge that the arrangement would violate international law.

The bases of White's resignation from the Committee is analyzed objectively and in detail and the much criticized letter of White to Roy Howard is explained in a way not prejudicial to White's pro-Ally position.

Approaching as we are a period when again the isolationist banner will undoubtedly be raised, this excellent study of a cross section of American public opinion and the reasons for its reactions is most timely. It may influence more stay-at-homes to join the direct descendant of the White Committee—the Citizens for Victory—and thus bring more political pressure to bear in favor of world cooperation.

GRAHAM STUART

Stanford University.

The Great Decision. By James T. Shotwell. New York: Macmillan, 1944. Pp. x, 268. Appendix. Index. \$3.00.

This book is a complete reflection of the author and might almost be called the autobiography of his thought about the maintenance of peace. Dr. was an active participant in "The Inquiry" which prepared for eaty of Versailles. He was an expert at the Paris Conference and conited notably to setting up the International Labor Office. Later he edited a monumental history of World War I. He has been acting as an official consultant and adviser and as an unofficial leader of studies regarding the forthcoming peace.

With such a background Dr. Shotwell would inevitably be as opposed to utopianism as to do-nothingism. He is therefore deeply impressed with the necessity for realism. Nevertheless he gives an optimistic interpretation of the facts which contrasts sharply with the usual pessimism and cynicism of self-professed realists. He exhibits both patience and temperance.

The volume finds its keynote in the assumption that the Industrial Revolution came late to war but in coming produced total war. Total war makes obsolete the famous dictum of Clausewitz which pictured war as an instrument of national policy. The author carries this assumption so far that it amounts to an assertion that a difference in degree has become a difference in kind. Some readers may feel that the uncontrollability of war in the past has been under-emphasized in order to sharpen the point with regard to the necessity of ending war now if civilization is to be saved.

Like most competent people who have an appreciation of the enormous ramifications of the problem of peace, Dr. Shotwell commits himself to a functional approach to individual issues in the belief that "the functional method of setting up the international organization keeps closer to realities" and permits the organs of peace to be "varied according to the tasks which they have to perform" (pp. 222–223). He does not, however, follow those functionalists who are devoted to process and virtually neglect purpose, realizing that "without a coordinating center the activities of the various parts would become confusing and contradictory" (p. 223). He puts his faith, consequently, upon a central political clearing-house and a central economic commission. Without in any respect minimizing the need of having force available for the world police force, he nonetheless believes that reduction of armaments is "perhaps the most urgent single problem confronting the postwar world" (p. 137).

The book is written with energy and not infrequently with eloquence. It makes its appeal to common sense and often points out the deficiencies of logic, both as an explanation of the past and as a means of persuasion with regard to the future. In recognizing emotion and the necessity for it the author lays equal emphasis on the need for its control.

HENRY M. WRISTON

Brown University.

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Society and Nature. A Sociological Study. By Hans Kelsen. Chicago: University of Chicago Press, 1944. Pp. vii+391. Index. \$4.00.

It is an outstanding feature of Kelsen's profound and extensive work in legal theory and in the philosophy of law that it never fears unpopularity.

The first pamphlet, preliminary to the second, studies the problem of coercion against the non-sovereign states of federal unions. A case against such coercion is made out of the history, experience, and Constitution of the United States. Great emphasis is laid on the corresponding opinions of Mason, Madison, Randolph, and Hamilton and on the fact that the U. S. Supreme Court cannot enforce its decisions against the states, although the dictum in Virginia v. West Virginia (1918) is duly noted. The same problem is studied with regard to Switzerland, South Africa, Canada, and Australia. The problem in the Imperial and Weimar federal Constitutions of Germany is not treated fully; much should have been said at this point on the problem of "Bundesexekution." Other federal unions, such as Brazil or the Republic of Austria are only briefly mentioned. The authors arrive at the conclusion that federal union grows as the result of intangible forces and that coercion is a disruptive, not a cohesive, influence.

It is on this basis that the second pamphlet studies the problem of coercion against sovereign States in international organizations. A brief survey of peace plans since 1300 is given, in reliance on Ter Meulen's work. A full study is made of the League of Nations: the formative stage of the "League to enforce peace," the League's rejection in this country "because of its coercive elements," Switzerland's reservations, Canada's stand against Art. X, the Covenant and its development, outside military alliances and the failure of the League from the very first moment, Poland's aggression against the Soviets. Great stress is laid on the voluntary fulfillment of decisions of international tribunals, on the Holy Alliance as a purely military status quo coalition and its failure, on the wholly non-coercive, merely consultative Inter-American system and the British Commonwealth of Nations, the two most successful international organizations.

The conclusions reached are that the analogy of local police power is unsound, that it is a fallacy to believe that any world government merely needs to establish a strong enough international military force to insure the peoples of the world that war will never come again; that political unity cannot be dictated; that since Pierre Dubois all proposals for the use of force are much more war plans than peace plans; that all these plans bear a strong family resemblance and are no more than military alliances directed against particular nations, created by victors after a war to uphold by force a status quo dictated by force, created for the hegemony of the victors; that force is here again a disruptive, not a cohesive force; that the refusal of important nations to join and the unwillingness of the members to apply "sanctions" lead to ultimate failure, whereas non-coercive international organizations have proved effective.

The studies are presented as a contribution to the supreme goal of a righteous and durable peace and are induced by the fear that the decisive steps now being taken or considered are all in the wrong direction.

It is not possible within the framework of a review to give a full critique

First of all, it must be said that sanctions, applied, if necesof these studies. sary by physical force, are an integral element of the conception of law and any system which denies that, is bound to lead to philosophical anarchism. And as international law is law this principle applies there too. typically English-American idea that in international law "public opinion" is enough is theoretically and practically untenable. We cannot agree with "William Ladd that "public opinion is the executive," that public opinion which, as H. J. Macnamara wrote in London in 1839, is "the mysterious agency to which kings and warriors bow and nations yield." equally true that law cannot be based upon or upheld by force alone. may be necessary but, as Hitler's experience shows, it has its definitive limits. This is equally true of the "concentrated power of the Big Three." All legal orders, national or international, are sociologically based, in the last analysis, on the consent of the governed. The emphasis on the voluntary fulfillment of international adjudications neglects the fact that in the past submission to international tribunals was purely optional; it is, on this account, misleading to say that voluntary fulfillment here was greater than in municipal law, where adjudication is compulsory. The non-coercive nature of the Inter-American system is a fact but Pan-America on account of its very particular conditions, cannot serve as a model, either for Pan-Europe or for a universal international organization. There is some truth in the statement that much peace planning since Pierre Dubois has been a sort of power-politics, veiled by high-sounding phrases, that the great majority of peace proposals are status quo proposals for the benefit of the victors and the satisfied, and that anyone who revolts against the vested interests of the status quo is called an "aggressor," that the identification of peace with security is bound to lead to frustration, as Professor Carr has forcefully brought out in his "Conditions of Peace."

But here the author could have used much stronger arguments, which at the same time would give us positive proposals, not merely a negative cri-_tique. He could have underlined that force must be an instrument of law (gladius legis custos); that the first necessary step is to make the present primitive international law, where force (reprisals, war) is put at the disposal of the interested party, judge in its own cause, a more advanced one by the introduction of compulsory international adjudication, as the statement on the "International Law of the Future" does; he could have emphasized that while force in the service of law is necessary, we must guard against the present trend of overestimating force, that we must create a new legal order, not merely a new political order; that the fact of "aggression" must be determined by an international court, as George A. Finch has proposed; that "sanctions" in a legal sense can only mean the application of force on the basis of a judgment against a state guilty of an international delinquency, and not, as the word is now often used, merely as a means of political pressure against a state which has not, perhaps, granted an oil concession.

On the contrary, its leading idea (the idea of the normative character of law) and the fundamental applications of that idea (particularly to the theory of public law) were both born in a struggle against most generally accepted doctrines, and are still struggling against these doctrines. Undoubtedly the future will acknowledge that Kelsen's Pure Theory of Law was a milestone on the road towards a truly scientific treatment of legal and—necessarily also—of political matters.

Producing a work of such caliber would have been more than enough for one man's life. However, we are faced with the extraordinary fact that the author of the Pure Theory of Law has conquered a new field of inquiry and has stamped upon it the same originality and fearlessness which marks his earlier work. That new intellectual conquest, as it appears in the present work, is not only psychologically remarkable but it testifies at the same time to the powerfulness of the idea of normativity restored by Kelsen to its rightful place in legal theory. In fact, the central discovery of Society and Nature is that the human mind has a deeply seated tendency to interpret not only society but also widely different extrasocial objects normatively. It is a specific normative principle—a principle of retribution—which, as Kelsen's analysis shows, is applied even to nature and world.

This fact—the elevation of normative principles to universal laws—is demonstrated by Kelsen in the first place for primitive societies. With the enduring patience of a genuine discoverer Kelsen has brought together ethnological material which proves with overwhelming force that among primitives a retributive interpretation of reality is extremely widespread. before has the true extension of that interpretation among primitive peoples been presented systematically. Under his guiding idea of normativity Kelsen's analysis of almost all aspects of primitive life—from birth to death, in its practical and its metaphysical aspects—really throws a new light on the development of the human mind and on the great strength of its binding The result of this analysis of "primitive consciousness"—which, principles. in addition to the retributive interpretation, also gives enlightening attention to other "social interpretations of nature" is expressed by Kelsen in the sagacious aphorism: "Primitive man is not a 'natural man' because he is a 'social man' in the strictest sense of the word" (p. 48). It should be noted that this thesis and its foundation substantially improve upon earlier formulations given by other theoreticians of the primitive mind (Durkheim, Tylor, Lévy-Bruhl, Frazer, Schmidt) in virtue of a logical superiority.

Kelsen extends his analysis of the role played by retributive ideas to Greek religion and philosophy, and even to modern natural science. Greek mythology and poetry particularly thus become the subject of new and interesting understanding. The attempt to make the normative scheme also fruitful for the analysis of Greek philosophy reveals the use of normative analogies in that philosophy and its specific significance for Greek religious metaphysics, as for Plato's doctrine of ideas. However, with respect to Greek philosophy Kelsen clearly overstates his point. Greek philosophy has such

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brizon that it could not possibly be exhausted by any such telsen's principle of retribution.

do modern science and philosophy (since Hume) resist a fruitful of Kelsen's tools. And this cannot be otherwise, since these fields have today liberated themselves from the mythological bondage of confusing causal and normative interpretation.

It then appears that Kelsen's Society and Nature, in spite of its enlightening contributions, does not succeed in reaching its chief goal, namely the demonstration of the a-causal thinking of the primitives and of the normative remnants in modern science. Primitive thinking in interpreting the world as a normative order in fact presupposes the principles of causality. It apparently conceives of punishments and rewards bestowed by nature as effects of certain human actions within a legal order. And it can furthermore not be denied that primitives also show, in their handicrafts, for example, attitudes which are even purely causally directed without any normative slant.

A detailed analysis of modern physics, psychology, biology, and sociology, on the other hand, shows that they too rely on the principle of causality. There is therefore in fact no need to explain its elimination sociologically. Primitive consciousness and modern science find themselves in their relation to the principle of causality fundamentally in the same situation. They both use it but they are more or less remote from its abstract formulation and from its epistemological systematization respectively.

Kelsen points in the introduction to Society and Nature to the tendency to establish "a monistic view of the world" (p. vii). Society and Nature makes us thoroughly acquainted with the extension held by a normative form of that tendency. The exaggeration of Kelsen's fruitful approach is likewise due to that monistic tendency which appears in Society and Nature as a form of sociologism, neglecting exact epistemological analysis in favor of sociological combinations, and carrying certain inductive generalizations too far.

Sociologism, however, is, in the light of Kelsen's own description of primitive consciousness, a sophisticated tribal metaphysics. One therefore only applies Kelsen's own findings to his actual formulations by clearly differentiating between the original discoveries in *Society and Nature* and the sociologistical constructions connected with them. This distinction carried through, Kelsen's fearless and penetrating search for truth about human nature becomes the more impressive.

JULIUS KRAFT

Colgate-Rochester Divinity School.

Racial State. The German Nationalities Policy in the Protectorate of Bohemia-Moravia. By Gerhard Jacoby. New York: Institute of Jewish Affairs, 1944. Pp. xii, 355. Documents. Map. Index. \$3.00.

Dr. Jacoby's book is a systematic analysis from the legal viewpoint of the action taken by Germany with regard to Czecho-Slovakia and the so-called

Protectorate of Bohemia-Moravia from the twilight of Munich up to the present. As demonstrated by Dr. Jacoby's scholarly analysis, Germany's aim was to create in the very middle of Europe what the author aptly calls a "racial state"—a political organization based upon the enslavement of the majority of the native population by the German master race—a pattern which was intended to be followed in the treatment of the rest of the Continent.

The first part of the book (pp. 1-72) deals with the establishment of the The author shows how Germany, by Protectorate of Bohemia-Moravia. resorting to legalistic doubletalk and through the clever distortion of generally accepted principles and devices of international law, attempted to create the impression that the extinction of Czecho-Slovakia had taken place with the consent of her legal representatives and through orderly legal proc-The end of the republic was formally sanctioned by a so-called agreement signed in Berlin on March 15, 1939, whereby the President of Czecho-Slovakia entrusted the Fuehrer with the fate of the Czech people. President signed the instrument under duress and furthermore, as the author conclusively proves, he had no authority under the Czecho-Slovakian Constitution to give away the independence of his country. What actually took place was the military occupation of Czecho-Slovakia by Germany without any legal justification. The so-called Protectorate which was thereafter established never had an international standing; it constituted territory under German power and governed by special domestic legislation aimed at the oppression and destruction of the Czech people. The author's masterly analysis demonstrates that Czech officials in the Protectorate only performed ministerial duties while important governmental powers were vested in the German protector, who, significantly enough, always had as a deputy a high Gestapo official.

The rest of the book deals with the legal measures introduced by Germany in the Protectorate in the furtherance of a policy of segregation (pp. 73–128), assimilation (pp. 129–202) and depopulation (pp. 203–264) of all non-German inhabitants. This atrocious German experiment, however, was not new, not efficient, not successful. That the Germans did not create anything new is demonstrated by the author's able analysis of the striking similarities between the Protectorate of Bohemia-Moravia and the Japanese Protectorate of Korea. Conflicts of jurisdictions and overlapping of powers resulted in utter confusion. Coexistence of different legislations and currencies complicated the life of the Protectorate. Furthermore, the Germans did not succeed in eliminating the silent but effective opposition of the Czech people.

The book is a tragic tale of misery and horror which is made even more effective by the skillful restraint of the author, who never attempts to dramatize his narrative. The volume also contains an extraordinary wealth of information, scarcely known to the American people, which the author was

able to organize into an orderly and readable work. The complex problems raised by German occupation are clearly outlined in this book, which is prescribed reading for all those interested in the problems of postwar reconstruction.

Angelo Piero Sereni

New York City.

The Czechoslovak Cause. By Eduard Táborský. London: H. F. & G. Witherby Ltd., 1944. Pp. ix, 158. 12/6.

This monograph study is intended mainly to demonstrate, from the view-point of international law, the illegality and invalidity of the Munich Agreement and of all the subsequent acts which affected the political independence and territorial integrity of Czechoslovakia, the "juridical continuity of the Czechoslovak Republic of 1938 and 1939 in the State which is represented by the Czechoslovak President, Dr. Benes, and his Government," and, from the viewpoint of the Czechoslovak constitution, the position of Dr. Benes as President of the Republic in spite of his resignation from office in October 1938. The scope and constitutionality of Czechoslovak legislative and judicial activities abroad and the establishment of Czechoslovak military courts in Great Britain, the Middle East, and in the Soviet Union are discussed in some detail. In the concluding part of the book, certain political, economic, and legal plans and preparations for the future are outlined.

While the line of argument is steadily maintained throughout, the legal analysis of the different "anomalies" which characterized the period from September 1938 to July 1941 is not always fully convincing. anomaly apparently consisted in the fact that although probably since September 1938 and certainly since March 15, 1939, Czechoslovakia de facto had ceased to exist, she nevertheless legally continued to be what she was before, i.e. an independent and sovereign State, but without an "organ which would have been capable of executing further the rights deriving from its continued existence." This obviously anomalous condition continued during the period of the Czechoslovak National Committee, which represented the Czechoslovak people or peoples but not the Czechoslovak State, until the recognition of the Provisional Czechoslovak Government in July 1940. From that time onward, and particularly since the recognition of the "Government of the Czechoslovak Republic" in July, 1941, the Czechoslovak State is again endowed with a supreme organ capable of exercising its sovereign rights.

A considerable effort is expended by the author on distinguishing de facto from de jure recognition. He apparently assumes that de facto or provisional recognition is identical with the recognition of a Government as provisional and that de jure or permanent recognition is identical with the recognition of a government as "definite." Arguing from this the author contends that "the mere recognition as a provisional government must be considered as

legally revocable," in other words that the recognition of the Provisional Czechoslovak Government was revocable, whereas the recognition accorded to the Government of the Czechoslovak Republic in July 1941 is "in principle permanent and irrevocable." In view of this effort it is somewhat surprising to read the admission that, at least from the viewpoint of the British Government, the recognition granted in July, 1941, may be revoked if the present Czechoslovak Government does not, after the war, "at once submit to the regulations of a democratic Czechoslovak constitution." Thus it would seem to follow that the British recognition at any rate was not full and irrevocable, or de jure, but merely conditional and revocable, or de facto, and that, for this reason, the present Government was not "definite" but pro-The author, perhaps unwittingly, conveys the impression that he was rather more concerned in vindicating the position of Dr. Benes as President of the Czechoslovak Republic and Head of the State and in drawing upon the British recognition in order to remove "any doubts which might have until then existed in connection with this question," than in developing a consistent theory in regard to the present position of the Czechoslovak Government. However, the book contains much information on many points useful to students of international law interested in the position of Governments in Exile.

Leo Gross

Fletcher School of Law and Diplomacy, Tufts College.

A Guide to Naval Strategy. By Bernard Brodie. Princeton: Princeton University Press, 1944 (rev'd ed.). Bibliography. Index. Pp. xii, 314. Illustrations. Index. \$2.75.

It is a generally accepted fact that much of modern international law concerning the conduct of war has resulted from military necessities. Just how these necessities operate is often a closed book to the international law-yer. For example, there has been a long intellectual controversy about the arming of merchant ships but the effect of any of the legal measures advocated upon the military security of the Powers, including the United States, has rarely been brought into the argument. Similarly, plans for the reduction of armaments and for sanctions against aggressors have seldom been made to fit the realities of war.

Anyone who wishes to acquaint himself with the realities of war at sea could hardly do better than read Bernard Brodie's Guide to Naval Strategy, the most adequate and satisfactory book on the subject existing today. In point of fact, it is the first systematic treatise on naval strategy in the English language since the publication of Corbett's Some Principles of Maritime Strategy in 1911. Originally published in 1942 as A Layman's Guide to Naval Strategy, the present (third) edition is, however, substantially a new book, which interweaves with its discussion of general strategy apt examples from the present war up to and including our landings in Normandy and

Saipan. Brodie, the author also of the excellent Sea Power in the Machine Age (Princeton, 1943, 2d ed.), has set himself the task of stating the mission of a navy under modern conditions. While emphasizing the revolutionary changes brought about by air power, Brodie lucidly demonstrates why capital ships (including carriers) remain the essential repository of sea power. Air, surface, and sub-surface arms combine to carry out the basic and traditional function of sea power, which is "to control transportation over the seas during war-time." This thesis was vigorously expressed by the author as far back as 1942, when it took some courage as well as foresight to do so. The course of the war justified Brodie's early analysis and provided it with additional convincing proof.

Contrary to the expectations of some highly articulate prophets, the last two years have seen naval fighting of an intensity unprecedented in history. The author points out, for instance, that at the end of the Guadalcanal campaign "the tonnage of sunken warships lying off the island was considerably greater than that lost on both sides at Jutland"—and Jutland was hitherto the greatest naval engagement in history. Moreover, the navy has assumed now greater importance than ever before, because modern war is a trans-oceanic affair. Only a few years ago even naval writers, such as the French Admiral Castex, held that land power was asserting itself more and more over sea power. Yet in the present war sea power has influenced the course of events more than ever before.

Against the great land power of Germany, Britain and America were able to invade France as a result of their control of the Atlantic end of the Channel, and largely just as a result of the fire power of their warships.

The chief value of Brodie's book lies in its modernized orthodoxy. Most followers of Mahan have reiterated the venerable principles without being able to apply them to modern conditions. Brodie's is the first good book which has been written on naval war as it is fought in the period of three-dimensional war. However, it should not be overlooked that Brodie's book is oriented almost exclusively toward Anglo-American naval problems and is written exclusively from the point of view of a superior sea power. The problems of economic naval blockade have, moreover, not been discussed.

The book contains a very valuable description of the tools of sea power, and it is remarkable that the author succeeded in turning a rather dry matter into interesting reading. The account of the submarine war in the Atlantic is the most illuminating which the reviewer has so far read. Equally interesting are Brodie's analysis of the failure of German naval strategy, his description of the astonishing naval campaign in the Mediterranean and his review of the Pacific war. The latter war is most difficult to understand because few people are familiar with Pacific geography and because problems connected with Japan are puzzling to the Western mind. In Brodie's interpretation our Pacific strategy becomes intelligible. Needless to add that the

author, now a naval officer, but in civilian life a political scientist, has not neglected the political and human aspects of the war at sea.

STEFAN T. POSSONY

Washington.

A Challenge to Peacemakers; Conflicting National Aspirations in Central and Eastern Europe. Edited by Joseph S. Roucek. Philadelphia: American Academy of Political and Social Science, 1944 (Annals, Vol. 232). Pp. ix, 240. Index. \$2.00.

It is questionable whether a symposium of this type is of much value. It certainly does not further our knowledge to read again a Ruritanian writer's presentation of the sacred and imprescriptible claims of his linguistic group and the assertion of a Laputanian politician that his own people in its dealing with "minorities" was always guided "by the well-tried principles of loyalty, tolerance, objectivity, and good will." It is an incontestable fact that the politicians of the "minorities" did not share this view and called intolerable oppression what the "majorities" called justice.

Professor Roucek in his Foreword expresses indignation over the way in which foreign observers speak about "the failure of the late King Alexander to unify his country by coercion, or the petty irritations which the Czechs produced while they were heaping benefits on Slovakia and Carpathian Ruthenia." The trouble is that the Croats and the Slovenes did not believe that King Alexander had a fair title to consider as "his" country what they called their countries. We may for the sake of argument admit that the Czechs were really heaping benefits upon Slovakia and Carpathian Ruthenia. But the Slovaks and Ukrainians do not long for Czech benefits. They want Whether one sympathizes with this attitude or not is to be left alone. largely immaterial. And it can hardly be denied that they oppose to Czech supremacy the same argument which the Czechs oppose to the insolent claims of the Nazis. They do not believe that their countries belong to the Le-They do not want to be "minorities" in a multibensraum of the Czechs. national state; they prefer to be majorities in their own country, even if it is only a small country. Such antagonisms are the source of continuous unrest; twice already they have resulted in World Wars.

Five articles advocate respectively the claims of the Finns, the Latvians, the Estonians, the Lithuanians, and the Poles to national independence and self-determination. The author of a sixth article, Mr. Heinz Eulau, asserts that "a realistic interpretation must state conditions, not preferences. Whether one likes it or not, the fact is that the Soviet Union considers the frontiers as they existed at the outbreak of war on June 22, 1941, as the incontestable territorial limits of the country." And further: "Whatever one may think of the legality or democratic validity of the plebiscites held in the disputed areas after they had been brought under Soviet control by force of arms in 1939 and 1940, their incorporation in the Soviet Union must be con-

sidered a fait accompli." But, says Mr. Eulau, the Soviet policy is "the very opposite of old-fashioned capitalist imperialism." In what way does Mr. Eulau's point of view differ from German "Realpolitik"?

Several contributions deal with the various schemes suggested for the establishment of durable peace in Eastern and Central Europe. But they discuss the problems involved in the traditional way. They do not inquire why all past attempts to realize such schemes resulted in complete failure.

The truth is that the politicians of each of the linguistic groups concerned fanatically support territorial claims which their immediate neighbors are prepared to contest to their last drop of blood. None of the linguistic groups concerned is ready to renounce the slightest of its pretensions for the sake of peace. As long as this mentality subsists, there can be no question either of peace or of democracy in this part of Europe.

LUDWIG VON MISES

New York City.

NOTES .

Fourth Report of the Commission to Study the Organization of Peace. General Statement and Parts I-III. New York City: published by the Commission, 1943-44. Pp. 27, 36, 40, 24. The solid achievements of the Commission organized in 1939 under the able chairmanship of James T. Shotwell have been outstanding in thoroughness of investigation and in the soundness of their conclusions. Each successive report has served to clarify the main problems of international relations. The present report deals separately with the following topics: I. Security and World Organization; II. The Economic Organization of Welfare; and III. International Safeguard of Human Rights. They are accompanied by a General Statement of the Fundamentals of the International Organization which summarizes in a convincing manner the main factors in international security and welfare.

Every one of these reports merits the most careful study and serious consideration. No other group has performed as comprehensive and informative a service. Part III, dealing with the International Safeguard of Human Rights, deserves special consideration because of its original character. It stresses the fact that the law of nations can no longer be concerned exclusively with the rights of sovereign states but must also deal with the rights of peoples and individuals. It advocates most persuasively the calling of a United Nations Conference on Human Rights and the ultimate formation of a permanent Commission to ensure the observance of an "international bill of rights."

PHILIP MARSHALL BROWN

Of the Board of Editors.

La Internacional Católica: las Normas de Derecho Internacional Publico en el Derecho Constitucional. By Pablo A. Ramella. San Juan, Argentina: Yanzon, 1938. Pp. 227. Appendix. Index. Dos pesos. In seeking to reconcile nationalism and the sovereignty of the modern nation-state with international peace and justice the author advocates the establishment of an international organization endowed with force to prevent and halt aggression (pp. 27, 156). However, such an organization must administer

justice, and as a philosophical jurist he seeks justice in superior law, insisting that "The State in making law must conform to principles superior to and outside of itself" (p. 45) and that ". . . the international community must recognize a superior order to which it should submit . . ." (p. 74). As the Church is "the depository of revealed Truth" (p. 75), it should enunciate basic juridical principles of international morality. But can the Church successfully oppose international communism (pp. 63, 214)? "There is only one doctrine that has a character of universality superior to communism, and which has over it the preëminence of being immutable.

The Catholic doctrine" (p. 215). Ramella's bias dominates his scholarship, however. Thus he defines communism as a political, not an economic, system and emphasizes atheism as its most important concept (pp. 40, 56). He refuses to recognize the Soviet Constitution of 1936 (the book was published in July, 1938), and refers only to the 1918 document; he charges the Soviets with war-mongering (p. 60) and with developing the largest army in the world for the purpose of aggression and universal conquest (p. 165). Ramella occasionally uses such unreliable sources as Istrati,

Rusia al desnudo to deprecate Russia's material progress (p. 58).

In addition Ramella concludes that in the Spanish Civil War the people were fighting for "life and liberty" against communism (p. 185); it was a war between "civilization and communism" (p. 77). He approves the assistance which Germany, Italy, and Portugal gave to Franco (pp. 185-He accepts St. Augustine's thesis that a defensive war is "morally and juridically" justified (pp. 45, 92) but asserts that the methods of war-fare of the Ethiopians against the Italians were "absolutely unnecessary" and revealed the "savagery" of the Ethiopian people (pp. 118-119). Nowhere does the author condemn the Fascists as aggressors nor does he recognize Germany as a possible menace to world peace. Indeed, the Treaty of Versailles made Germany a slave to a "usurious world capitalism." There are a few factual errors. In 1938 the Constitution of Honduras was that of 1936, not 1924 (pp. 34–35); the Russian ideology is based very much more on the philosophy of Marx than on that of Hobbes (p. 58); and the author misinterprets (pp. 207–208) the juridical issues involved in President Roosevelt's arms embargo against Bolivia and Paraguay through failure to take into account United States v. Curtiss-Wright Export Corporation (299 U. S. 304) (1936.)

Despite these weaknesses the book has considerable value. The author shows a particularly keen understanding of St. Thomas Acquinas, St. Augustine, Francisco P. Suárez, and Francisco de Victoria, and much of his argument is based upon careful research and sound thinking. It is hard to attack his exposition of the need for international order, or his method of achieving it through international organization based upon force. His chapters on sanctions, disarmament, sovereignty, and international guarantee of individual rights are extremely well-written and thought-provoking. WILLIAM S. STOKES

Northwestern University.

The Gateway to Citizenship. By Carl B. Hyatt. States Department of Justice, 1943. Pp. vii, 153. Washington: United Documents. Index. This little volume is not a treatise on citizenship or naturalization, but a handbook for the use of the officer who conducts the ceremony at which the alien finally becomes a naturalized American citizen. The usefulness of the

book is made clear by the historical sketch of our naturalization procedures with which it opens. For many years the naturalization of aliens in this country was effected by varied and hit-or-miss procedures, and was too often attended by scandal and corruption. These abuses were substantially corrected by the Act of 1906, which established a measure of uniformity in naturalization procedure, put a stop to the grosser abuses, and created the Bureau of Immigration and Naturalization to aid the courts in the administration of the law. There has been steady improvement ever since in the entire management of naturalization. The percentage of aliens naturalized in federal courts has risen to 65, in contrast to the earlier preponderance of naturalizations in the state courts. Federal judges are aided by Naturalization Bureau examiners in determining the qualifications of applicants for citizenship. In 99 per cent of the cases coming before federal judges the recommendations of these examiners are followed. The result is that the final hearing at which citizenship is actually conferred upon the new citizen has become little more than a ceremony. The purpose of this book is to make it easy for the presiding judge to make this ceremony genuinely impressive, rather than casual and perfunctory. A substantial section of the volume is devoted to "the court ceremony," each part of which is fully explained and described under the following headings: time and place; preliminary procedures; opening of court; the flag, music, invocation; presentation of candidates; the oath of allegiance; address to new citizens; certificate of citizenship and mementos of the occasion; pledge of allegiance; closing of the court.

The remaining and larger part of the book contains source materials which may be drawn on by the presiding judge. Here will be found appropriate statements by Presidents and Chief Justices of the United States upon the value of citizenship; suggestions for addresses to new citizens; examples of prayers, pledges, oaths of allegiance, creeds and codes; quotations on the meaning of the flag, on Americanism, and on freedom; and a number of carefully worked out sample programs.

The book has been sent, together with a letter from Chief Justice Stone, to all United States Circuit and District Judges. There can be little doubt that it will be a godsend to the busy judge who must from time to time conduct naturalization ceremonies. It should contribute substantially to the dignity and impressiveness of the occasion when new citizens are made.

ROBERT E. CUSHMAN

Cornell University.

United Nations Relief and Rehabilitation Administration, Report of the Director General to the Second Session of the Council, Sept. 1944, and Supplementary Report. Washington: UNRRA, 1944. Pp. 139, 20. Appendixes. These reports describe the activities of the UNRRA from November 11, 1943, when the Director General took office, through September 15, 1944. Separate chapters in both the original report and in the supplement deal with finances, supplies, relief and rehabilitation services, administrative organization, and committees. It is apparent from the data submitted that the UNRRA is completing the organizing period of its career and will soon be ready for large-scale operations. The total staff of the Administration now exceeds 1500, of whom nearly 600 are in relief missions now operating in the Balkans and in MERRA camps. With the nationals of twenty-four states on its roster, this staff is in truth an international civil service. Nothing stands out more clearly in the report, however, than the dependence of the

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Administration upon the cooperation of member governments. Contributions by those governments to the administrative budget have generally been made with promptness, but some of the governments appear to have been dilatory in providing operating funds. The report solicits the cooperation of member governments in the recruitment of personnel, in the provision of information as to supplies, and in the extension of privileges and immunities to the personnel of the Administration. An itemized list of the allocations of supplies by the several supplying countries, provided in Appendix B of the Supplementary Report, brings out strikingly the immensity of the relief problem. By way of illustration, Brazil on May 6, 1944, supplied ninety million yards of woven cotton materials. The itemized list shows, too, an emphasis upon the type of supplies which will "help people to help themselves." Throughout the report the reader is impressed with the efficient and systematic manner in which the problem of relief is being treated. Certainly there is a great improvement over the methods used after the First World War.

NORMAN HILL

University of Nebraska.

Tea Under International Regulation. By V. D. Wickizer. Stanford University: Food Research Institute, 1944. Pp. vi, 198. Appendixes. Index. \$2.50. This study is "a product of researches exploring the general idea that postwar commodity problems can be effectively dealt with by international bodies set up under international commodity agreements." It takes up first the characteristics of tea and the tea industry, production, trade, and consumption. The history of tea regulation is then reviewed. The final chapters are devoted to an appraisal of the International Tea Agreement and a consideration of regulation potentialities and prospects.

The author shows that during a period of six and a half years, which was terminated by the outbreak of the present war, control over tea was quite successfully exercised by an international body set up under an international commodity agreement. Among agricultural products at least tea is unusually well adapted to international control. The demand for tea is relatively inelastic; the productive acreage cannot be quickly expanded or contracted; yields can be adjusted by picking fewer or more tea leaves; production of the strong black teas preferred by the western world is concentrated in the hands of a relatively small number of producers in the British and Dutch Empires; tea buying is also highly concentrated, with London as the center. Such a combination of circumstances made it comparatively easy to secure agreement among the main tea producing interests, restrict exports, increase prices, and improve profits of producers.

Stress is laid not only on the adaptability of the product to control but also on the "wisdom and maturity" of the policies followed by the tea control authorities as factors in the success achieved under the Agreement. It is pointed out, however, that not all of the commodity problems were solved. While the tea industry enjoyed a return of prosperity little progress was made either in expanding consumption or in reducing basic production capacity by eliminating the weak and less efficient producers. But surplus capacity was not the heavy burden for tea producers that it was for producers of some other agricultural products in the interwar period. As for the future, the author feels that surplus tea producing capacity is not likely to be a problem at the close of the war, and that prevention of the development of such a

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romoting efficient production will be the great task of the

of this informative work is enhanced by its clear and simple It should make interesting reading for all who give some the possibilities of economic planning in the post-war period.

Lois Bacon

Alexandria, Virginia.

Life and Labour in Shanghai: A Decade of Labour and Social Administration in the International Settlement. By Eleanor M. Hinder. New York: Institute of Pacific Relations, 1944. Pp. ix, 143. Index. \$1.50. Although the political set-up in the area and during the period described was full of all sorts of complications and irritating international cross-currents, the author presents a beautifully dispassionate treatment of the subject. It is many fold more valuable because of the part she herself played in investigation and handling of the social problems concerned with the varied masses of Chinese labor involved. The period described, 1932 to 1943, was one of real pioneering effort, but vexatiously complicated by the Japanese invasion and later by the Pacific war.

Miss Hinder presents a record which will be of invaluable aid to those who will have to struggle with the labor problem which is bound to assume gigantic proportions with the industrialization which will come to China like a colossal tidal wave after peace again reigns among her 450 millions. There is one thing we may all bank upon as sure to characterize post-war China, which is the country's industrialization. Miss Hinder's studies if properly applied to the conditions which must attend China in industrialization can save many headaches and form the basis of organization for the handling of social problems connected with China's emergence into the machine age.

We may anticipate considerable investments of American capital in industrial enterprises in post-war China. Those who have the handling of the problems of setting up and operating modern industrial plants in China will do well to study carefully the experiences in social welfare work in the complicated Shanghai area as described so ably and so sanely by Miss Hinder. Any reader must be especially impressed by her very sympathetic attitude toward the Chinese and by her fairness in giving them full credit for their laudable aspirations and the good work done by them.

JULEAN ARNOLD

Berkeley, California.

Relief and Rehabilitation; Implications of the UNRRA Program for Jewish Needs. By Zorach Warhaftig. New York: Institute of Jewish Affairs, 1944. Pp. 223. Index. \$1.00. When the Nazis chose the Jews as their first victim, it was not understood generally that this was a test attack on civilization in general. But in a similar way the settlement given at the end of the war to Jewish problems will be a test of the new international order to come. Jewish problems are international problems par excellence and cannot be solved by actions of single states; there must be international regulation since the European Jews have been dispersed all over the world. The problem of statelessness has become largely a Jewish problem and among the minority questions the problem of the Jews may be the most significant of all because the Jewish minority is the "ideal type" (in a sociological sense) of a minority.

The first of the new international organizations which is faced with Jewish

problems is UNRRA. A study of UNRRA's work from the Jewish view-point deserves, therefore, the close attention not only of those who are interested specifically in Jewish questions but also in international questions as such.

Warhaftig's chapters deal with Jewish participation in the setup of UNRRA, the relief policies of UNRRA, the range of UNRRA relief and aid for displaced persons. He scrutinizes the rules laid down by UNRRA, points to deficiencies and problems left open, and makes specific suggestions for their modification. All his suggestions are moderate and could easily be fitted into the pattern of the existing rules. Even where he calls for priorities for Jews it is only on the basis of a priority of needs which hardly could be denied. Actually some of his suggestions have been accepted in the Second (Montreal) Conference of UNRRA which was held shortly after the book was published.

Other problems, however, still remain open. The most important of them, may be the supervision of the administration of UNRRA relief by local government authorities and guarantees to safeguard its equitable distribution without discrimination. Here the specific problem is linked up with the crucial problem of sovereignty in the coming world order. It would be a highly significant precedent if local governments were compelled to recognize that there are limits to their power and that they are compelled to respect the rules laid down by an international agency in the treatment of their own nationals.

A careful bibliography which contains articles from periodicals not easily accessible generally is included.

FR. SCHREIER

Brooklyn College.

Inter-American Affairs, 1943. Edited by Arthur P. Whitaker. New York: Columbia, 1944. Pp. x, 277. Appendixes. Maps. Index. \$3.00. The regular appearance of this indispensable survey of events in the Inter-American world constitutes an event of real importance to students of international affairs. For the series that Professor Whitaker initiated and has continued to edit not only records the developments of the year in politics and diplomacy, labor and social welfare, industry, commerce and finance, transportation and communications, and cultural relations of the twenty-two American nations in the Western Hemisphere. These volumes also provide solid testimony to this country's enduring concern with the affairs of its neighbors.

During the year under survey Latin America did not loom large on our horizon. The United States did not furnish a vigorous leadership in Inter-American affairs as was the case in 1941 and 1942. Nationalistic movements flourished throughout Latin America and our attention was chiefly devoted to the war in Europe and in the Pacific. The growing interest in a world organization to assure peace also helped to shift attention away from all regional movements and this was particularly true of Pan-Americanism. Indeed, its supporters were forced to consider how the inter-American system could be adjusted to the projected world organization and what part the smaller American states would have in building the new world order.

All of the chapters are factual—some of them to a soporific degree, although it must be admitted that the contributors are handling large masses of detail. The editor, however, gives plenty of sweep in his chapter on "Politics and Diplomacy" and in the concluding "Summary and Prospect,"

which are well written, informed, and discerning statements on a variety of difficult topics. The account of our efforts in the cultural relations field by Dr. Nichols also provides critical comment as well as facts. Can it be that the other contributors did not feel free to indulge in evaluation because they are for the most part connected with official agencies in Washington? Perhaps not, but at any rate there is such a concentration of personnel and information in Washington that the editor will always have to draw heavily

upon official sources.

In conclusion a few suggestions for improvement may be hazarded. It might be well to attempt to enlist competent Latin Americans to prepare chapters or special articles. Thus far only Canadians and Americans have contributed. More thought could be devoted to the integration of the economic chapters as there appears to be some unnecessary duplication. The twenty-two page "Inter-American Chronology" is a miscellary of extremely variegated material and might well be suppressed in favor of a chronology of Inter-American Conferences and Congresses-political, economic, juridical, cultural—which is badly needed and hard to find. The bibliography could be improved by more careful selection and annotation of the items included. It is unfortunate that there was no reference to the Inter-Departmental Committee on Coöperation with the American Republics, probably the most important single governmental agency for longrange activities with Latin American Governments. These observations are intended as helpful hints to the editor and in no substantial way deny the value of this annual scrutiny of Inter-American Affairs.

LEWIS HANKE

Hispanic Foundation, Library of Congress.

Philadelphia Lawyer. By George Wharton Pepper. Philadelphia: Lippincott, 1944. Pp. 407. Appendix. Index. \$3.75. There are few men who have had such a distinguished career as the author of this interesting and stimulating book. A leader of the bar, a United States Senator, a university professor, a distinguished scholar, churchman and citizen, Senator George Wharton Pepper has had some share in so many important activities of life that his autobiography is a valuable contribution to the history of the times. He writes interestingly of his experiences, of the many distinguished men and women he has known, and underlying and enriching his narrative is an expression of his philosophy, social, political, and religious—the philosophy of one who has lived a long and active life and who writes from the fullness of his knowledge as the shadows lengthen.

The readers of this JOURNAL will perhaps be most interested in the account of his fight against approval of the Covenant of the League of Nations. Senator Pepper was much opposed to the League and was one of its most formidible antagonists. He organized "The League for the Preservation of American Independence," the object of which was to prevent the ratification of the Covenant. He names as his collaborators Senators Brandegee, Borah, Frelinghuysen, Johnson, Moses, New, and McCormick. He made many speeches in all parts of the country in opposition to the Covenant and wrote a series of pamphlets designed "to make the controversy comprehensible to

the man on the street."

In concluding his discussion of this subject, he says that, when the Treaty was finally defeated, "I had a sense of relief comparable to that which followed the Armistice. I cherished the vain hope that the next European War would not involve the United States." Senator Pepper's opposition to

the League, which was undoubtedly very effective, was based primarily upon the fact that it contemplated the use of force to prevent international He realizes that the hope that the next European war would not involve the United States was "vain." but does not indicate whether his views as to the necessity for the use of force by a world organization to keep

the peace have undergone any change.

Senator Pepper also reviews his activities in opposing the proposition made in 1923 that the United States should "adhere to the World Court." The objection which he advanced was that the World Court by its constitution was required to give advisory opinions on any dispute between the League members when requested so to do by the League. This he felt made the Court an organ of the League of Nations which he had so strongly opposed.

THOMAS RABBURN WHITE

Philadelphia.

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WILBUR S. FINCH

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UNITED NATIONS

REPORT OF THE INFORMAL INTER-ALLIED COMMITTEE ON THE FUTURE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE*

February 10, 1944

CHAPTER I

INTRODUCTION

- 1. In the early part of the year 1943, a proposal was made by the Government of the United Kingdom for taking advantage of the presence in London of a number of experts in the service of certain of the Allies to consider the question of the Permanent Court of International Justice. It was felt that this was a matter to which early consideration could be given without inconvenience, since the only assumption which required to be made was that an International Court in some form would be needed in future, whereas the time was not then ripe for going into other questions which would arise in connexion with the post-war situation. It was accordingly suggested that such Governments as had available an expert with an adequate knowledge of the subject should each nominate one such representative to constitute an informal expert committee to consider this question. It was to be understood that the object of this Committee would be to produce a report which might be of assistance to all the United Nations, but would not be binding on the Governments represented on the Committee. The experts were to act purely in their personal capacity and not in the name of their Governments. This proposal was accepted by the Governments of Belgium, Canada, Czechoslovakia, Greece, Luxemburg, The Netherlands, New Zealand, Norway and Poland, and by the French National Committee (now French Committee of National Liberation), who appointed the experts whose names appear on the first page of the present Report. The Government of Yugoslavia, while not appointing an expert to the Committee, expressed a desire to be kept informed as to its work and has been in regular receipt of the Committee's minutes.
- 2. The first meeting of the Committee was held on the 20th May, 1943, when Mr. G. G. Fitzmaurice was appointed Secretary. The Committee has held nineteen meetings in all, and now has the honour to present its Report.
- 3. As stated in paragraph 1, the only assumption which it is necessary to make for the purposes of our Report is that an International Court in some form will be required in future. Such a Court might be either (a) the existing Permanent Court of International Justice, continued in existence with such modifications in its present Statute as may be necessary, or (b) a new Court established by means of a new Statute, which, however, would
- * From an informal preliminary printing; later issued as British Parliamentary Papers, Miscellaneous No. 2 (1944), Cmd. 6531.

probably contain a number of provisions taken from or based upon the present one. Which of these two alternatives should be adopted is a question of high policy with which it is not our province to deal; we hope that the material and recommendations of this Report may be found useful whichever course be adopted. Accordingly, references to the future Court in this report should be regarded as applicable whether that Court be the Permanent Court of International Justice or a newly-created body.

- 4. We have not thought it necessary to burden this Report with a general description of the organisation and working of the Permanent Court of International Justice, and in general we have not referred to provisions in the Statute of the Court as to which we consider that no amendment is called for. It is, we think, generally agreed that the Statute has on the whole worked well, and it is desirable to make full use of an existing structure which has proved well adapted for its purpose. It should be assumed, accordingly, that as regards the provisions of the Statute which are not mentioned in this Report, we consider that they should be retained in the constitution of the future Court. We would point out, however, that the Special Chambers set up under Articles 26–29 of the Statute to deal with Labour and Transit cases, and to provide a summary form of procedure, have scarcely, if at all, been utilised. We have not, therefore, gone into the question of these Chambers and we make no recommendations on the subject.
- 5. We have, so far as possible, avoided matters of detail and have confined ourselves to the broad issues of law and policy affecting the future of the Court. We have made definite and unanimous recommendations, where we considered such to be called for, in regard to all the subjects we have dealt with, with the exception of the question of regional chambers which forms the subject of Chapter XI. In this chapter we have broken entirely new ground, and in view of this and of the fact that the question is not directly material to the main topic before us, namely, what action is necessary or desirable to secure the existence and functioning of a standing International Court in future, we have not thought it appropriate to put forward definite recommendations on the subject of regional chambers. We have preferred to confine ourselves to drawing attention to the matter and to setting out for consideration two tentative methods by which it might be dealt with, if a decision in that sense were eventually taken.
- 6. As part of the general question of the future Court we have considered the subjects of its name and the location of its seat, both of which have a certain political and psychological importance. As regards the former, there has been a tendency in certain quarters to employ unofficial expressions, such as "World Court," instead of the Court's correct title of "Permanent Court of International Justice." We doubt, however, whether, as the formal and official style of a permanent International Court, the present title can be improved upon. It also lends itself to the convenient abbreviation of "Permanent Court," and we accordingly recommend its retention.

7. As to the location of the Court, we think that every consideration of convenience, association and sentiment is in favour of retaining The Hague as the central and principal seat of the Court, without prejudice to the possibility of its sitting elsewhere on occasion, or even acquiring subsidiary seats if the course of events made this desirable.

CHAPTER II

NEED FOR A NEW INTERNATIONAL AGREEMENT

- 8. As pointed out in paragraph 3 above, we assume that the existing Permanent Court of International Justice will either (a) continue in existence after the war, with such modifications in its present Statute as may be necessary, or (b) be replaced by a new Court established by means of a new Statute. Under hypothesis (b) a new international agreement between the States concerned would obviously be necessary. But it appears to us that under hypothesis (a) a new international agreement would equally be required before the Permanent Court of International Justice could resume its functions, and that the necessary action to produce such an agreement should not be unduly delayed. The reasons why this is so are as follows.
- 9. Under Article 8 of the Statute, the Judges of the Court are appointed by means of a simultaneous election by the Assembly and Council of the League of Nations, and the Judges so elected hold office for nine years. The last "general election" took place in 1930, and a new Court should accordingly have been elected by the Assembly and Council in 1939. The meetings of the Assembly and Council fixed for September in that year were, however, postponed owing to the outbreak of the war, and though the Assembly met in December to consider the appeal by the Finnish Government, it decided not to proceed during its session with the renewal of the membership of the Court, but to regard the election as postponed to another session. then, the Court has only been kept in being in virtue of the provision in Article 13 of the Statute that the members of the Court "shall continue to discharge their duties until their places have been filled." During this period one of the Judges of the Court has died and two have resigned, and owing to this fact and to the presence of some of the Judges in countries under German occupation, it is unlikely that the Court could muster a quorum at present if it were called upon to sit. It is, moreover, probable that some of the Judges, owing to age or other reasons, would not be willing to continue their membership of the Court after the war. In any case, it would be impossible to regard the existing Court as still continuing in existence under Article 13 for more than a limited period.
- 10. It is clear therefore that, if the Court is to continue in existence after the war, a general election must be held as soon as practicable. But, as explained above, under the existing Statute such an election can only be con-

ducted by the Assembly and Council of the League of Nations. It does not appear likely that when peace is restored the Assembly and Council will be available for this purpose and even if they were we are of opinion that, for the reasons given in Chapter V, this system of election should not be continued and should be replaced by something else. This would involve a modification of the Statute which would require a new international agreement between the States concerned. This would be even more necessary if other recommendations in this Report which involve modifications of the Statute are adopted.

11. It results from the above that whether the existing Court is continued or a new one substituted for it, one of the matters to be considered by the States concerned after the termination of the present hostilities will be the conclusion of a new international agreement on the subject.

CHAPTER III

CONNEXION BETWEEN THE COURT AND A GENERAL INTERNATIONAL ORGANISATION

- 12. For the purposes of this Report we assume that after the war some General International Organisation will be set up, as contemplated, for instance, in paragraph 4 of the Moscow Declaration of the 30th October, 1943. It is not necessary for us to speculate what the nature of that organisation will be, but whatever it is, the question whether the Court should be connected with it, and, if so, in what way, is one of the most important points which will require decision in connexion with the future of the Court.
- 13. The Permanent Court of International Justice is at present closely connected with the League of Nations. It was established in consequence of Article 14 of the Covenant, which required the Council to submit to the members of the League plans for its establishment. The same article provides that the Court might give advisory opinions "upon any dispute or question referred to it by the Council or by the Assembly," and it resulted from this that advisory opinions could not be given except upon such a Under its Statute the members of the Court are elected by the Assembly and Council of the League. The expenses of the Court are met by the League; its budget is part of the League of Nations budget and is examined and passed by the financial authorities of the League as such. This is a connexion of a nature which may be described as organic, and the first question is whether such a connexion with the future international organisation is desirable.
- 14. In our opinion this question should be answered in the negative. It cannot, we think, be doubted that the Court has to some extent suffered in the past from its organic connexion with the League, which, whether logically or not, resulted in its prestige being dependent to some extent upon the varying fortunes of the League. Moreover, this organic connexion

was doubtless responsible, at any rate in part, for the unwillingness of some States to become parties to the Statute, and for the fact that others severed their connexion with the Court when they withdrew from the League.

- 15. It seems, moreover, possible that any General International Organisation would, in its early stages, be of a tentative character and may undergo changes as the result of experience. It is, however, clearly desirable that the Court should be on a permanent basis and should not be liable to be affected by changes which the Organisation might undergo.
- 16. Another consideration which leads to the same conclusion is that such an organic connexion between the Court and a General International Organisation will not work satisfactorily unless the membership of the two institutions is entirely, or at any rate practically, identical. This was not so in the case of the Permanent Court and the League, since not all the parties to the Statute were members of the League and not all the members of the League were parties to the Statute, and this caused considerable inconvenience in practice. It will probably be considered desirable that the Court should be universal in character, in that it should be open to all civilised States to become parties to the Statute and thereby entitled to take part in the activities connected with the Court, but it does not seem likely that this will be the case with the future International Organisation, at any rate, in its early years.
- 17. We accordingly recommend that the organic connexion which has existed between the Permanent Court of International Justice and the League should not be continued. This does not mean, however, that there should be no connexion between the Court and the General International Organisation at all. In our view, the Court should be regarded as part of the machinery at the disposal of the Organisation, and this would appear to be consistent with such proposals as have been made in connexion with the Organisation, which, so far as our knowledge goes, all seem to contemplate the existence of an International Court as part of its machinery. Court has been established, it would be open to the International Organisation to make such use of it as it thought fit; it could, for instance, provide in its own constitution the conditions in which its members would be bound to submit disputes of a justiciable character to the Court, and it might similarly prescribe any measures which it thought appropriate for ensuring that the decisions of the Court were effectively complied with. We deal with this point further when considering the question of the jurisdiction of the Court in Chapter VI.
- 18. It is, of course, essential that the judicial independence of the Judges of the Court should in no way be prejudiced by any connexion between it and a General International Organisation. But it does not appear that the independence of the Judges of the Permanent Court of International Justice (as distinct from the prestige of the Court as a whole) was ever regarded as affected by its organic connexion with the League, and we see no reason to

suppose that the much looser connexion with the International Organisation which we advocate would have any such effect.

- 19. If the Court is not organically connected with the General International Organisation, it should not be dependent upon it for finance, and some separate arrangement would be necessary. We deal with this point in Chapter X.
- 20. It may be that, in the course of time, experience may show the desirability of a somewhat closer connexion between the Court and the General International Organisation; this would depend upon the way in which events developed and the form ultimately assumed by the Organisation. The fact that at the outset the connexion had been of the looser type which we advocate would not prevent the subsequent establishment of such closer connexion as the nations might think appropriate at a later time.

CHAPTER IV

CONSTITUTION OF THE COURT

Section 1.—Qualifications and Nationality of Judges

- 21. Under Article 2 of its Statute, the Permanent Court of International Justice is to be composed of "a body of independent Judges, elected regardless of their nationality from amongst persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law." This appears to us to be in principle an adequate description of the qualifications required in Judges, and we do not suggest any alteration in it.
- 22. We have given considerable thought to the question of what, within the framework of the above provision, the composition of the Court ought to We all agree that a combination of persons possessing judicial experience and persons possessing "recognised competence in international law" (these two qualifications are not mutually exclusive) should be aimed at, while some of us attach considerable importance to the possession of experience in international affairs. The question of what the proportion should be between what may be called the judicial and the professorial elements in the Court is not one as to which it is possible to lay down anything like a fixed rule, but we feel that the former has so far been under-represented in the Permanent Court of International Justice, and that an increase in the number of Judges who have had judicial experience in their own countries would be desirable in future, even if this involved some diminution in the professorial element. This question, however, and the cognate question of the extent to which the possession of official, political or diplomatic experience should be regarded as a qualification for membership of the Court, is in our opinion not one which can be dealt with by any provision of the Statute; it must be left to the judgment of those responsible for the nomination and

election of the Judges, and all that we can do is to indicate the considerations which, in our opinion, should be borne in mind.

- 23. Under Article 2 of the Statute the Judges are to be "elected regardless of their nationality." In principle this is certainly the ideal to be aimed at, the object being to choose a Court composed of the most suitable and competent persons whom the world can produce, from whatever countries they may come. But Article 9 provides that the electors are to bear in mind that "not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilisation and the principal legal systems of the world": and this inevitably introduces the idea of nationality to some extent. do not feel, however, that the reference to "the principal legal systems of the world" is altogether satisfactory. If what it means is that there should be representation of the various legal systems based, e.g., on Roman law, the Code Napoléon and the Anglo-Saxon Common Law respectively, this result is likely to be achieved in any event without any special provision being necessary. But one of the "principal legal systems of the world" is certainly the law of Islam, and no representative of that law has ever been elected to the Permanent Court. We feel that the emphasis should rather be on the differences of outlook and methods of thought to be found amongst exponents of different legal systems.
- 24. We are of opinion therefore that no express provision should be made for the representation of the different legal systems of the world as such upon the Court. On the other hand, we consider that there is great value in the representation on the Court of different types of mind and methods of legal thought, which may indirectly have the consequence that certain countries would in practice habitually be represented. If the principle of electing the best available candidates is acted on, it will almost inevitably result that different schools of thought would in practice find representation, so that no special steps to secure that end would be necessary.
- 25. This naturally leads to the question whether particular countries should, as such, have a prescriptive right to representation on the Court. Prior to the establishment of the Permanent Court of International Justice, this was one of the major difficulties in the way of the constitution of a standing International Court. It was then got over by the ingenious device of a simultaneous election by the Assembly and Council of the League, it being held that the necessity of each Judge being elected by the Council as well as by the Assembly would secure the permanent representation of such countries as could fairly expect it.
- 26. It is in our opinion, no longer either necessary or desirable to adopt this or any other method of ensuring the permanent representation of particular countries—or of particular groups of countries, to which similar considerations apply. It is essentially inconsistent with the principle of electing the best candidates available irrespective of nationality, to which we

attach the greatest importance. Moreover, it would render more difficult a reduction in the present number of Judges to which, for the reasons given in Section 2 of this Chapter, we also attach great importance. Nor does it appear necessary from the point of view of the limited number of countries who might fairly expect to be always represented on the Court. It seems probable that those countries would in fact always be so represented, either because of the operation of the considerations mentioned in paragraph 24 above, or because the qualifications of the candidates nominated by them are likely to be so outstanding that they would be sure of election on their merits alone. This appears to us to be a natural result and much preferable to giving any countries or groups of countries a specific right to permanent representation.

27. If, however, this course is adopted, it will be more than ever necessary that the elections should be conducted on the basis of choosing the best men available. If this principle were substantially departed from it would, in our opinion, be almost inevitable that the idea that certain countries or groups of countries should have a right as such to permanent representation would revive, and we should expect it to be accompanied or followed by a movement to increase the number of Judges. Either of these developments would, in our view, be most undesirable.

28. The "independence" of the Judges, prescribed in Article 1 of the Statute, is safeguarded by the provisions of Articles 16 and 17, under which they may not exercise any political or administrative function, engage in any other occupation of a professional character, act as agent, counsel or advocate in any case, or participate in the decision of any case in which they have previously taken an active part; of Article 18, under which a Judge cannot be dismissed except by the unanimous consent of the other members of the Court; and of Article 19, under which they enjoy diplomatic privileges and immunities when engaged on the business of the Court. Under Article 23 the Judges are bound to hold themselves permanently at the disposal of the Court unless they are on regular leave or prevented from attending by illness or other serious reason. These provisions have worked satisfactorily in practice, and we consider that they should be maintained without alteration.

Section 2.—Number of Judges

29. Under the original Statute of the Permanent Court of International Justice the number of Judges was 11, with 4 Deputy Judges, who were called upon to sit when necessary to make up the number of 11. In 1930 the Deputy Judges were abolished and the number of Judges was raised to 15. This is the present number of the Judges of the Court, the number necessary to constitute a quorum being 9.

30. In our opinion this figure of 15 (which may on occasion be raised to 17 owing to the presence of ad hoc judges) is too high and is not conducive to the satisfactory working of the Court. It is much higher than the number of

Judges who normally sit in the Superior Courts of most, at any rate, of the countries of the world. Leaving out of account exceptional cases, such as Courts of Cassation, there is, so far as our information goes, no case where the number of Judges normally exceeds 9; in general the numbers appear to vary from 8 to 5. If the Court is too large the efficiency of its deliberations is likely to be prejudiced, and the participation of an excessive number of Judges in those deliberations is liable to result in a deterioration in the quality of the judgments produced. We accordingly regard a substantial reduction in the present number of Judges as essential.

- 31. In our opinion the appropriate number of Judges is 9. There is indeed a case to be made for a lower figure, but we consider that 9 is the smallest number likely to win general acceptance, bearing in mind the desirability of providing sufficient scope for the representation on the Court of different types of mind and methods of legal thought. The figure of 9 would, of course, be exclusive of ad hoc Judges, if these are retained in conformity with the system recommended in Section 4 of this Chapter.
- 32. On the basis of a Court of 9 Judges, we recommend that the number necessary to constitute a quorum should be fixed at 7, since we do not consider that a lower figure would be generally acceptable. In normal circumstances 9 Judges should suffice to provide a quorum of 7, but it is necessary to provide for the possibility of illness, long leave and casual vacancies, and in Section 4 of this Chapter we make certain proposals which should ensure that it would be always possible to secure the attendance of a Court of 9, so that a quorum of 7 would present no difficulty, and should indeed only be required to meet the case of illness occurring in the course of a session.

Section 3.—Period of Appointment

- 33. Under Article 13 of the Statute, the members of the Permanent Court of International Justice are elected for a period of nine years and may be reelected. Vacancies resulting from death or resignation are filled as they occur, the newly-elected member holding his appointment for the remainder of his predecessor's term. It results from this that a "general election" is held every nine years, when all the members of the existing Court go out of office and a new Court is elected, though some members of the previous Court are probably re-elected.
- 34. From some points of view there is a case to be made for electing the Judges of the Court for life, subject to an age limit. It is argued that this would give stability to the Court and security of tenure to the Judges, and would generally promote the cohesion and independence of the Court and a true international outlook. We feel, however, that these arguments are outweighed by the considerations that appointment for life might result in the presence on the Court of an excessive number of Judges of advanced age, and would seriously diminish the extent to which the Court could at intervals be

revived by the introduction of new blood. Judges who are eminently satisfactory can always be re-elected, and it is undesirable to give a life tenure to any who may not be. We are of opinion, therefore, that the present system of election for nine years should be continued.

35. We are of opinion, however, that it is undesirable to continue the present system under which the entire Court goes out of office simultaneously The result of this is a complete break in the continuity every nine years. and traditions of the Court, unless a considerable number of the Judges suc-We feel, therefore, that there is everything to ceed in securing re-election. be said for replacing the present system by one which would ensure both the continuity of the Court and a supply of new blood at fixed intervals. recommend accordingly that while the system of election for nine years should be retained and Judges elected to fill casual vacancies should hold office for the remainder of their predecessors' term, one-third of the Judges should go out of office every three years, when an election would be held to fill these vacancies, retiring Judges being eligible for re-election. In order to get such a system working, some special arrangements would be required during the first years after its adoption. The simplest arrangement would be that at the first election the principle that Judges were elected for nine years should apply, but that exceptionally three of the Judges, who, unless any Judges desired to take the opportunity of retiring, should be selected by lot, should retire after three years, when an election to fill three places would be held, the retiring Judges being eligible for re-election. Similarly, after six years, three of the remaining six Judges selected in the same way would retire and be eligible for re-election. After nine years the remaining three of the original nine Judges would retire, and thereafter the system of the retirement of one-third of the Judges every three years would work automatically. The result would be that if all the Judges who retired after three and six years were re-elected, they would in fact serve for 12 and 15 years respectively, but assuming that they were suitable for re-election we do not consider this a serious objection.

36. Under the Statute there is no age fixed at which the Judges should retire. We have considered the question whether such an age limit should be introduced, but have come to the conclusion that it is not necessary and is open to serious objections. It can no more be assumed that every Judge who has reached the age-limit is incapable, by reason of age, of performing his functions efficiently than that every Judge who has not reached it is capable of doing so, and it might well turn out to be the case that Judges who were retired under an age-limit were among the most efficient members of the Court. In fact the most serious objection to an age-limit is that it is liable to affect the wrong men. Some of these objections could perhaps be met by allowing the age-limit to be extended in particular cases, but we feel there are insuperable objections to such a system. The only body in whom such a power could be vested would be the other members of the Court, and we feel that in that event either extension would become automatic, in which case

the age-limit would in practice disappear, or the duty of deciding whether one of their colleagues should have his term of office extended or not would place the members of the Court in an extremely difficult, if not impossible, position. We feel that a system of election for 9 years, with one-third of the Court retiring every three years, should in practice attain much the same result as a fixed age-limit without being open to its objections.

37. If, however, an age-limit were adopted, we are strongly of opinion that it should not be fixed too low. We consider that the age of 72 should be the minimum, and a number of us would prefer 75.

Section 4.—National and Supplementary Judges

- 38. Under Article 31 of the Statute of the Permanent Court of International Justice, Judges of the nationality of each of the contesting parties retain their right to sit in the case. Any party may, if there is no Judge of his nationality on the Bench, choose a person to sit as Judge. Persons so chosen are known as "national" or ad hoc Judges.
- 39. Ideally, this system may be open to objection as detracting from the idea of the permanence and "non-national" character of the Court, but in practice we consider that it is essential to retain it. Countries will not in fact feel full confidence in the decision of the Court in a case in which they are concerned if the Court includes no Judge of their own nationality, particularly if it includes a Judge of the nationality of the other party. Moreover, while national Judges are not, or should not be, representatives on the Court of the case of their own country, they fulfill a useful function in supplying local knowledge and a national point of view.
- 40. Being accordingly of opinion that the system of national Judges should be retained, we have been led to consider whether it would not be possible to strengthen the position of the Court by giving a more definite status and function to national Judges, and we are of opinion that there would be great advantages in so doing. It is, we consider, very desirable that all the parties to the Statute should feel that they have a direct interest in the Court, other than that which results simply from participation in its election. But if the number of Judges is reduced to 9, as we recommended in Section 2 above, only a small proportion of parties to the Statute can (except under a regional system such as one of those which we discuss in Chapter XI) be represented at any time by Judges of their own nationality. That this has been so even when the Permanent Court of International Justice consisted of 11 and subsequently of 15 Judges is shown by the following table:

Countries represented on the Court throughout

_ Jı	ıdges ,	J	udges
U. S. A	4	Japan	2
U. K	2	Netherlands	2
France	2	Spain	2
Italy	1	Cuba	1

Countries represented during part of the Court's existence

j J	udges		Judges
Belgium 1931–39	2	Germany 1931-35	1
Brazil 1922-30	2	Poland 1931-39	1
China 1931-39	2	Roumania 1931-39	1
Colombia 1931–39	1	Salvador 1931–39	1
Denmark 1922–30	1	Sweden 1936–37	1
Finland 1938–39	-1	Switzerland 1922–30	1

Countries never represented

Albania	Estonia	Nicaragua
Argentina	Ethiopia	Norway
Australia	Greece	Panama
Austria	Hàiti	Paraguay
Bolivia	Hungary	Peru
Bulgaria	India	Portugal
Canada	Iran	South Africa
Chile	Jugoslavia	Siam
Czechoslovakia	Latvia	Turkey
Dominican Republic	Lithuania	Uruguay
Eire	Luxemburg	Venezuela.
Egypt	New Zealand	*

Note.—Supplementary judges have not been taken into account. The list in the third group contains a few countries who have never ratified the Statute but have taken part in the nomination or election of Judges.

It will be seen that only 19 countries have ever been represented by a Judge on the Court and 33 have never been so represented, and among the latter appear such countries as Norway, Greece, Czechoslovakia, Austria, Portugal, Jugoslavia, Turkey and all the members of the British Commonwealth of Nations other than the United Kingdom.

41. If the number of Judges is reduced, as we propose, from 15 to 9, the likelihood of parties to cases before the Court having to appoint ad hoc judges will be pro tanto increased, and it will moreover be desirable, as explained in paragraph 32 above, to make provision for a reserve of judges who could be called upon if necessary to ensure that 9 Judges were available for every case. We suggest accordingly that at each election of the Court each party to the Statute (subject to the exceptions mentioned in paragraph 43 below) should nominate one candidate, who should, of course, comply with the requirements of Article 2 of the Statute (see paragraph 21 above). Candidates so nominated should, by the fact of nomination, become members (though not Judges) of the Court. As such, they would, for a period of 9 years, automatically be the national judges of their respective countries, and would also be available to sit as supplementary judges to make up the number of 9 when required. They would also be available to form regional Chambers or panels (see Chapter XI), if such a system were adopted. When sitting in any of their capacities, they would not require any special appointment, but would sit in virtue of their membership of the Court. In order to give so far as possible to each member of the Court a reasonable chance of sitting as a Judge, we suggest that the Court should prepare panels of the members available to sit as supplementary judges; that the members of each panel, which might be appointed for a period of three years, should be liable to sit when called upon; and that any member of the panel who during that period had sat as a national judge should not be called upon to sit as a supplementary judge.

- 42. The national judges would not (except under a regional scheme—see Chapter XI) be required to hold themselves permanently at the disposal of the Court, as provided in the case of Judges by Article 23 of the Statute, but they would be bound to sit as supplementary Judges if called upon. They should not be bound by the prohibition in Article 16 not to exercise any political or administrative function or to engage in other professional occupations, but they should be precluded, in conformity with Article 17, from acting as agent, counsel or advocate in any case before the Court, and from participating in the decision of any case in which they had previously taken an active part. They should, in accordance with Article 19 of the Statute, enjoy diplomatic privileges and immunities when engaged on the business of the Court; this would mean that they would enjoy these privileges when called upon to sit as national or supplementary judges, but not otherwise.
- 43. It will no doubt be considered desirable, particularly if the number of Judges is reduced as we propose, to retain the existing provision (Article 10, second paragraph, of the Statute) under which not more than one national of the same party to the Statute can be a Judge of the Court at any time. When therefore an election is held, it would not be open to those countries who already had a Judge on the Court (who was not retiring) to nominate a candidate. In the case of any country not so represented, its national judge would automatically be its candidate, unless the period of 9 years for which he had originally been nominated had expired.
 - 44. This scheme appears to us to possess the following advantages:
 - (a) The present position of an ad hoc judge is unsatisfactory; he has no regular or permanent status as a Judge of the Court, but is there for the particular case only on the ad hoc nomination of his own country. Under the system which we suggest, national judges would not be specially appointed for a particular case; they would have a permanent status as members of the Court, and their whole standing from a judicial point of view would be greatly improved.
 - (b) The fact that each party to the Statute was represented by someone having the status of a member of the Court would of itself give all countries a greater stake in the Court and help to promote interest in it.
 - (c) There would always be available a reserve body of judges for such supplementary purposes as might be required. Under the suggested system there would never be any difficulty in making good

any vacancies on the regular Court due to illness, absence on leave or other cause.

(d) In the same way a great deal of elasticity would be imparted to the constitution of the Court from the point of view of the future. If at any time it appeared desirable to adopt some kind of regional system in regard to the functioning of the Court (see Chapter XI), the necessary number of judges would be available.

..., CHAPTER V

METHOD OF NOMINATION AND ELECTION

Section 1.—Nomination

- 45. The existing system of nominating candidates for the Permanent Court of International Justice, as provided for in Article 4 of the Statute, is that of nomination by the national groups in the Permanent Court of Arbitration. It was designed to diminish the intrusion of political considerations into the nomination of candidates, and also to spread the responsibility for the choice of a candidate amongst a great number of persons. It seems to be the general view, however, that it has not worked out as intended, and in our opinion it is an unsatisfactory method which should not be continued. The responsibility for the choice of candidates must, we think, rest upon Governments, and we therefore consider that the only satisfactory method is direct nomination by Governments themselves.
- 46. If the proposals we have made in Chapter IV, Section 4, are adopted, so that all candidates nominated by Governments, if not elected Judges, become members of the Court as national judges, it will follow that each Government can only nominate one candidate, and it seems safe to assume in these circumstances that Governments would only nominate their own nationals. This would dispose of the question, which has given rise to some discussion in the past, whether it should be open to a Government to nominate a person who is not its national as an *ad hoc* judge. We had already come to the conclusion that such a nomination was undesirable.
- 47. It seems desirable to continue the system established by Article 6 of the Statute of the Court in regard to nominations, by which Governments would be recommended to consult the appropriate judicial, legal and academic authorities in their several countries before making nominations. In this connexion we considered a number of suggestions for making this obligation more definite, but we ended by rejecting anything going beyond the general recommendation provided for by Article 6 of the Statute, for the following reasons. While it is certainly most desirable that a Government which proposes to nominate a candidate for a judgeship of the Permanent Court should not act solely on its own initiative and should obtain the views of competent authority and opinion in its own country, it is important to exclude any possibility that the validity of a nomination, once made, should subsequently be open to challenge on the ground that the necessary consulta-

tions had not been effected. To ensure this, it would be necessary to lay down in precise detail what consultations a Government must carry out, so that each Government might be in a position to know its obligations and to demonstrate that they had been complied with. We feel, however, that this would lead to insuperable difficulties, since the conditions in different countries vary considerably and it is not possible to lay down precise universal rules as to what bodies are to be consulted, what method is to be adopted, or what weight is to be given to the view of different legal authorities. We consider accordingly that the present provision should be retained as a recommendation to Governments.

Section 2.—Election

- 48. As stated in paragraph 9 above, elections are, under the present Statute, conducted by means of a simultaneous election by the Assembly and Council of the League of Nations. It cannot be assumed that these bodies will be available for the purpose in future, and we have explained in Chapter IV, paragraphs 25 and 26, our reasons for thinking that the system of a double election is no longer necessary for the purpose for which it was originally adopted. If the new General International Organisation contains a body corresponding to the Assembly of the League, it would be possible for the elections to the Court to be conducted by it, but this would constitute an organic connexion between the two bodies of the precise nature which, for the reasons given in Chapter II, we deprecate, at any rate in the early years of the new Organisation. It is therefore necessary to devise some other system.
- 49. We have considered a suggestion that the selection might be left to be effected by the corpus of candidates nominated by the Governments (see Chapter IV, paragraph 40), on the ground that those concerned would be the best placed from a professional point of view to decide who were most fitted to make up the regular Court, and to impart to it the correct balance in regard to such matters as the number of career judges, professors, &c., who would sit, or the representation of different types of legal thought. Despite the attractions of this suggestion from certain points of view, however, we have come to the conclusion that it is doubtful whether a corpus so constituted would be the most suitable body to select nine of its members to sit as judges of the regular Court, and that to leave the selection to such a body would be liable to place its members in a difficult position and to lead to undesirable features. We have come to the conclusion, therefore, that the responsibility must rest with the Governments to elect the nine Judges of the regular Court from among the corpus of candidates.
- 50. If the proposals made in Chapter IV, Section 3, above are adopted, there would be an election to fill three places on the Court every three years. To send special representatives to take part in elections at such frequent intervals might be inconvenient for Governments whose seat was at a considerable distance from the place at which the elections were held. If these

could take place at the same time and place as a regular meeting of the Assembly of the General Organisation, assuming such a body to exist, this inconvenience would be obviated, since the majority of the Governments concerned would be interested in both and their representatives at the Assembly could take part in the election. It may, however, be considered that election by the members of the Assembly in the course of a meeting of that body would bear so close a resemblance to election by the Assembly itself as to constitute an organic connexion between the General Organisation and the Court, and must therefore be ruled out for the reasons given in Chapter II. If so, it would be necessary that a triennial meeting of the Governments concerned should be held to conduct the elections.

- 51. The suggestion has been made that the inconvenience of such a procedure might be reduced by the first ballot being conducted in writing, each Government sending its vote to a headquarter Government agreed upon for To conduct all the ballots which would be required in the event of the necessary number of candidates not obtaining the required majority on the first ballot would no doubt lead to undue delay; but, if confined to the first ballot, we think that there is much to be said for this suggestion. It is likely that one or more of the vacant places would be filled as the result of the first ballot, and, as regards the remainder, the voting would show which candidates had to be seriously considered on subsequent ballots, which should considerably facilitate the task of the electors. If so, it might be possible for subsequent ballots to be conducted by the diplomatic representatives of the Governments concerned at some convenient capital, e.g., the seat of the Court, it being open to any Government which desired to do so to send a special representative for the purpose, or to assist its diplomatic representative by attaching to him for the purpose of the election a person acquainted with the merits of the different candidates and the subject as a whole.
- 52. If, as suggested in Chapter III, paragraph 20, subsequent experience led to the establishment of an organic connexion between the Court and the General International Organisation, the task of electing the Judges of the Court could then be transferred to the appropriate organ of the latter body.
- 53. An absolute majority of the votes cast would, as at present, be necessary for the election of any candidate. The suggestion has been made that the election of the best candidates would be more likely if something more than a bare majority were required. We feel that this suggestion deserves consideration, but it is difficult to foretell how it would work in practice, and we do not feel able to make any recommendation upon it.

CHAPTER VI

JURISDICTION OF THE COURT

54. The first question in connexion with the jurisdiction of the Court is that of the countries to which it should be open. We feel that, if the Court

is to fulfil its function as a "World Court," it must be open to all civilised States. It seems to follow from this that it should be open to all such States, subject to the considerations set out in paragraphs 58 and 61 below, to become parties to the Statute of the Court, whether they are members of the proposed General International Organisation or not. There seems little to be said for going beyond this and allowing particular countries to have recourse to the Court without being parties to the Statute and participating in the responsibility for maintaining the Court, including participation in the elections, and for bearing their share of its expenses. We recommend accordingly that, subject again to the considerations set out in paragraphs 58 and 61, it should be open to all States to become parties to the Statute.

55. The jurisdiction of the Permanent Court is at present defined in the first paragraph of Article 36 of the Statute as comprising "all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." In the latter part of the same article (the "Optional Clause") the matters as to which States may accept the compulsory jurisdiction of the Court are defined as "all or any of the classes of legal disputes concerning (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation." It is not clear what the relationship between these two definitions was intended to be, nor whether the latter was regarded as narrower than the former. be noted that the words in the former definition "all cases which the parties refer to it," &c., are not limited, as is the latter, either by the word "legal" or by any enumeration of classes of cases with which the Court is competent to deal.

56. We feel that this very wide definition of the competence of the Court is open to objection. Nothing seems to us more important, from the point of view of the prestige of the Court and of enabling it to play its proper part in the settlement of international disputes, than that its jurisdiction should be confined to matters which are really "justiciable," and that all possibility should be excluded of its being used to deal with cases which are really political in their nature and require to be dealt with by means of a political decision and not by reference to a court of law. It cannot be denied that there have been cases in the past where this has been done or attempted, with results which show how desirable it is that any such possibility should be excluded in future; and it may well be considered that in the past the distinction between matters which can be properly referred to a court of justice and those which can only be settled by a political decision, has been insufficiently appreciated, and that there were signs of confusion between the two in some of the attempts made in the period between the two wars to construct all-embracing schemes for the settlement of international disputes.

- 57. We feel, therefore, it to be very desirable that the jurisdiction of the Court should be defined in more precise terms. The "Optional Clause" definition, quoted in paragraph 55 above, appears to us to constitute a satisfactory definition of what the Court's jurisdiction should be; but if it is thought that it is undesirable to depart completely from the definition in the first paragraph of Article 36 of the Statute, to which no serious objection has been taken in the past, we recommend that it should be limited by inserting the word "justiciable" before both "cases" and "matters."
- 58. The next question which arises is whether the jurisdiction of the Court should be compulsory; i.e., whether the Statute should oblige the parties to it to have recourse to the Court in all or some of the matters falling within its competence, so that acceptance of such jurisdiction would result automatically from acceptance of the Statute. We are definitely of the opinion that, for the present, at any rate, this question must be answered in the negative. We are anxious to see the widest possible recourse to the jurisdiction of the Court, but we feel that it would, in existing circumstances, be premature to attempt to impose compulsory jurisdiction by means of the Statute itself. We feel that the insertion of such a provision might, in existing circumstances, deter a number of States from becoming parties to the Statute; particularly since, if accession to the Court is open to all States, the effect would be that every party would be bound by the compulsory jurisdiction of the Court in regard to justiciable disputes with every other State. We consider that this is an obligation which a number of countries whose acceptance of the Statute is most desirable would, at present at any rate, be unable to accept. We recommend accordingly that the Statute should contain no provision which would automatically impose the jurisdiction of the Court on the parties thereto in cases within its competence.
- 59. The exclusion, however, of such an obligation from the Statute would not mean that States could not accept a corresponding obligation by other It has become a common practice to insert in particular treaties, multilateral or bilateral, a provision for the reference to the Permanent Court of disputes concerning the interpretation or application of the treaty, and this practice will doubtless continue. Moreover, it is always open to two or more States to accept a general obligation to have recourse to the Court by agreement between themselves. This was, indeed, the object and effect of the "Optional Clause," and we consider, therefore, that this clause should be retained in the Statute. The process of accepting the "Optional Clause" had become widespread before 1939, and though the position may require reconsideration in the light of the war and its consequences, we think it should certainly be open to States, who desire to accept the compulsory jurisdiction of the Court as between themselves, to do so in this way.
- 60. Finally, while we consider that acceptance of the compulsory jurisdiction of the Court should not be made a condition of accession to the Statute,

this would not prevent its being made, in such circumstances as the States concerned considered proper, a condition of membership of a future General International Organisation. The Constitution of such an Organisation may well contain provisions for the settlement of disputes between its members, and, if so, it would be perfectly natural to lay down there the conditions in which the members of the Organisation bound themselves to have recourse to the Court for the settlement of justiciable disputes between themselves. Since it is not, as we understand, contemplated that, for the present at any rate, membership of the Organisation would be open to any State that chose to apply for it, the difficulties referred to in paragraph 58 above should not exist, or should exist at any rate to a much lesser degree. Moreover, the question of the means by which decisions of the Court should, if necessary, be enforced is eminently one which could be dealt with in the Constitution of the Organisation, but not in the Statute of the Court. We feel that it is by some such means, rather than by an attempt to impose compulsory jurisdiction as a condition of acceptance of the Statute, that the universalisation of the jurisdiction of the Court is likely to be attained.

- 61. If the above view be accepted, the question whether exceptions to the compulsory jurisdiction of the Court should be permitted will not arise in connexion with the framing of the Statute. It would arise, in the circumstances suggested in paragraph 60, in connexion with the constitution of the General International Organisation, but that is outside our terms of reference. Perhaps, however, we may be permitted to say that, in our opinion, the possibility of certain reservations, at any rate, would have to be admitted; some countries would certainly desire to maintain certain reservations (e.g., those relating to disputes which arose before a certain date) which they made when accepting the "Optional Clause"; and there may well be other matters, such as disputes arising out of the present war or in consequence of the peace-keeping activities of the General International Organisation, as to which the possibility of reservations would certainly have to be admitted.
- 62. The law to be applied by the Permanent Court is defined in Article 38 of the Statute as follows:

"The Court shall apply:

- (1) International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;
- (2) International custom, as evidence of a general practice accepted
 - (3) The general principles of law recognised by civilised nations;
- (4) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. This provision shall not prejudice the power of the Court to decide a

case ex æquo et bono, if the parties agree thereto."

The wording of this provision is open to criticism and it would not be difficult to make suggestions for improving it; but on the whole the difficulties resulting from it do not seem to be of a sufficiently serious character to necessitate any change. It seems to have worked well in practice, and we consider that any attempt to alter it would cause more difficulties than it would solve.

63. The only other provision of the Statute relative to the jurisdiction of the Court which we think it necessary to mention is Article 59, which provides that "The decision of the Court has no binding force except between the parties and in respect of that particular case." The effect of this provision has, in our opinion, sometimes been misinterpreted. means is not that the decisions of the Court have no effect as precedents for the Court or for international law in general, but that they do not possess the binding force of particular decisions in the relations between the countries who are parties to the Statute. The provision in question in no way prevents the Court from treating its own judgments as precedents, and indeed it follows from Article 38 (quoted in paragraph 62 above) that the Court's decisions are themselves "subsidiary means for the determination of rules of law." It is important to maintain the principle that countries are not "bound" in the above sense by decisions in cases to which they were not parties, and we consider accordingly that the provision in question should be retained without alteration.

CHAPTER VII

ADVISORY OPINIONS.

- 64. The jurisdiction of the Permanent Court of International Justice to give advisory opinions arose from Article 14 of the Covenant of the League, which provided that "The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." The procedure for giving advisory opinions is regulated by Chapter IV (Articles 65–68) of the Statute of the Court.
- 65. Some of us were inclined to think at first that the Court's jurisdiction to give advisory opinions was anomalous and ought to be abolished, mainly on the ground that it was incompatible with the true function of a court of law, which was to hear and decide disputes. It was urged that the existence of this jurisdiction tended to encourage the use of the Court as an instrument for settling issues which were essentially of a political rather than of a legal character and that this was undesirable. Attention was drawn to instances of this which had occurred in the past. Subsidiary objections were that the existence of this jurisdiction might promote a tendency to avoid the final settlement of disputes by seeking opinions, and might lead to general pronouncements of law by the Court not (or not sufficiently) related to a particular issue or set of facts.
- 66. Despite these considerations we have come to the conclusion that the jurisdiction to give advisory opinions ought to be retained and ought even

to be enlarged. In the first place it is not correct to say that a jurisdiction of an "advisory" nature is inconsistent with the proper function of a court of law. The legal systems of certain countries contain a procedure whereby certain matters can be referred to the courts for an opinion, or for a declaration of what the law is, or what the rights or status of the applicant are or would be under a given set of circumstances. The exercise of this jurisdiction by municipal courts has not, so far as we are aware, led to difficulty, and has proved of undoubted utility.

- 67. Secondly, it is clear that a General International Organisation, if it possesses anything in the nature of a regular Constitution, will require authoritative legal advice on points affecting the Constitution, the rights and obligations of Member States and the interpretation of the instrument setting up the Organisation. There are distinct limits to the extent to which such matters can be dealt with internally (e.g., by the legal section of the Organisation's Secretariat) or by such means as reference to an ad hoc committee of jurists. League experience has shown the necessity of having an authoritative standing tribunal to which, in suitable cases, questions of this kind can be referred for an opinion. On this ground alone, therefore, we think that the jurisdiction of the Court to give advisory opinions must be retained.
- 68. In the third place, there are reasons which make it desirable to allow two or more States, acting in concert, to obtain an advisory opinion. They are as follows:
 - (a) From an international point of view, it seems desirable to provide a procedure whereby the legal rights and position of parties can be determined or at any rate assessed, before any difference of opinion between them has ripened into an issue or definite dispute which can only be settled by actual litigation.
 - (b) It may be useful to countries to be able to ascertain their legal position without involving themselves in a judicial decision binding on them as such and requiring immediate execution.
 - (c) The faculty to ask for an advisory opinion may be very helpful to parties engaged in negotiations (e.g., for a treaty or for the settlement of some outstanding issue) where the requisite basis for negotiation does not exist until the legal rights of the parties, or the correct interpretation of some existing instrument, has been definitely ascertained.
 - (d) There may well be cases in which special relations between countries render them reluctant to appear before the Court as apparently hostile contending parties in a litigation, but where the existence of a "friendly dispute" between them nevertheless requires some form of disposal by legal means.
 - (e) Whereas an International Organisation can to some extent meet its needs by referring questions to an ad hoc committee of jurists, this

procedure is difficult, if not impossible, for States. Reference to some ad hoc tribunal is no doubt possible, but if the Court exists it is best that it should be used, and its pronouncements will carry greater weight than those of any such tribunal.

- 69. In the light of this conclusion, the subject of advisory opinions resolves itself mainly into two questions, whether the scope of the jurisdiction should remain as it is at present, or be enlarged; and what safeguards should be instituted to control it and to prevent its misuse. The first of these questions is, in essence, whether the faculty to request advisory opinions should be confined to the executive organs of any future General International Organisation, or should be extended to other bodies, and to individual States. second question concerns the steps to be taken to ensure what we are all agreed are most important requirements, namely, that only questions of law should be referred for an advisory opinion, and that such questions should not be of a merely general or abstract character, but should relate to some definite issue or circumstance, and be based on an agreed and stated set of Failing some such control, there is a risk that the Court may be used for making pronouncements on political issues, or in a semi-legislative capacity for making general statements or declarations of law, instead of giving advice as to what the law is in relation to a defined issue or set of facts.
- 70. Concerning the scope of the faculty to seek advisory opinions, we are agreed that there is no reason to confine it to the executive organs of the future General International Organisation, and that it could usefully be extended to other associations of States such as the International Labour Office, the Universal Postal Union, &c. Unless the list of such Associations is settled for this purpose, either in the Statute of the Court or from time to time by the General International Organisation, it would be for the Court itself to decide whether the body concerned had the international and intergovernmental character necessary to give it the capacity to ask the Court for an advisory opinion.
- 71. We are also agreed that, provided the necessary safeguards can be instituted, there would, for the reasons given in paragraph 68, be considerable advantage in permitting references on the part of two or more States acting in concert. Applications by an individual State ex parte could not be permitted, for, given the authoritative nature of the Court's pronouncements, ex parte applications would afford a means whereby the State concerned could indirectly impose a species of compulsory jurisdiction on the rest of the world. In addition, the Court must have an agreed basis of fact on which to give its opinion.
- 72. With regard to the question of how the necessary control can be secured over matters referred to the Court for an advisory opinion, so as to ensure that only questions proper to be put to the Court are heard by it, we have considered whether all applications should pass through and be re-

quired to receive the fiat of the appropriate organ of the General International Organisation. The objections to this are, first, that the nature and functions of such an Organisation are at present unsettled; secondly, that some control will require to be established over the Organisation's own applications for advisory opinions.

- 73. On the whole therefore it seems to us desirable to leave the necessary control to be exercised by the Court itself. As explained in paragraph 56. we attach the greatest importance to the Court's jurisdiction being confined to matters which are really "justiciable," and this applies equally to advisory It would, accordingly, be for the Court to decline to deal with an application directed to political and not legal issues, or to require a restatement of the case so as to confine it to pure questions of law or treaty interpre-The Court would equally refuse to consider the application if the facts were not agreed, or were inadequately stated, or if the questions put were of too general a character, not involving concrete issues in which the parties were actively interested. In the same way the Court would refuse to allow the procedure by way of advisory opinions to be used as a means of reopening questions already judicially determined, or for pronouncing on questions of municipal law where these lay solely within the competence of domestic tribunals.
- 74. All these would be matters to be provided for in the Statute of the Court. In addition, it would be necessary to ensure that it was not open to two States, acting in concert, to obtain a pronouncement from the Court on a matter of interest to other States (e.g., the interpretation of a multilateral convention) where the latter had had no opportunity of intervening. We consider that this point would be adequately met by maintaining the procedure of notification by the Registrar of the Court set out in the existing Statute.
- 75. If such a scheme be adopted, we see no objection to allowing two or more States, acting in concert, to apply direct to the Court for an advisory opinion.

CHAPTER VIII

PROCEDURE

Section 1.—General

76. To enter fully into questions of procedure would be a task of some magnitude, and we have not considered it necessary to go into detail. Our main conclusion is that the procedure of the Court would best be left to be settled by the Court itself by Rules of Court. Matters of procedure should only be dealt with in the Statute of the Court where they involve fundamental points of principle which it is desired to settle once and for all. This is very largely the scheme followed by the existing Statute, but the section on procedure nevertheless contains a number of provisions which could

without inconvenience (and in some cases with advantage) be eliminated and left to be dealt with by Rules of Court.

77. Subject to this, we think that little change is required in the procedure of the Court, which has worked satisfactorily in practice. One question to which we have given consideration is that of the proper function of the oral proceedings before the Court. We have the impression that in certain cases these have involved some waste of time, the representatives of the parties doing little more than repeat arguments already fully (and often more adequately) set out in the written pleadings. The latter must always constitute the main part of any proceedings before the Court, but we do not on that account suggest the elimination of the oral proceedings, which have considerable psychological value and act as an important focussing point for the work We think, however, that there would be some advantage in confining the oral proceedings to two main classes of matters, namely, (a) points raised or made in the last written pleading to which the other party had not yet had an opportunity of replying; (b) points on which the Court had itself indicated to the parties in advance that it would like to hear oral To assist in focusing the oral proceedings we should also like to see a more extensive adoption of the existing practice whereby Judges may ask specific questions of the advocates in the course of the hearing, instead of simply listening in silence to their speeches. But the above are all matters which cannot usefully be dealt with by definite written rules and must be left to the discretion of the Court.

Section 2.—Language

78. The question of language is eminently one of principle which should be dealt with, as at present, in the Statute of the Court We see no reason to alter the existing rule, set out in Article 39 of the Statute, that French and English are the official languages of the Court, or the provision there made for employing, in certain cases, one only of these languages or some other language. Questions of translation, on the other hand (and at oral hearings of interpreting one language into the other), should we think be regulated by Rules of Court, the Court being best placed to decide, with reference to each particular case, how far translations, &c., are necessary or can be dispensed with.

Section 3.—Method of Producing Judgments

79. Subject to one point, we think that the present method of producing the judgments of the Court as provided for in Articles 55 and 58 of the Statute is satisfactory. The main provisions covered by these Articles are that decisions are given by a bare majority, the President or his Deputy having a casting vote in the event of an equality of votes; that the judgment of the Court is to state the reasons on which it is based and the names of the

Judges who concurred in it, and that any Judges who dissent from the opinion of the majority may deliver a dissenting judgment.

- 80. We have considered the suggestion that more than a bare majority should be required for a judgment of the Court. It has been pointed out that when the Court consisted of 15 Judges it has sometimes happened that judgments were given by say only 8 votes against 7, and that the fact of a large body of votes being cast against a decision of the Court tends to weaken the authority of the Court's decisions. If, however, the recommendation which we make elsewhere (see Chapter IV) is adopted, so that there would be not more than 9 regular Judges, this objection to the bare majority rule should be sensibly diminished. In view of this, and of the difficulty of ensuring a definite decision (which is after all the main object of the proceedings) by any other means than the majority rule, we have decided against recommending any departure from it.
- 81. The foregoing observations bring us to the question of dissenting judgments. Some of us were inclined to think at first that these should be abolished, on the ground that the main object of the proceedings was to secure a decision and to announce the reasons in support of it, so that dissenting judgments were, in strictness, both irrelevant and liable to weaken the authority of the actual decision. Despite these considerations, however, we are of opinion that the system of dissenting judgments, which we believe to have proved satisfactory in the experience of the Permanent Court of International Justice, should be maintained for the following reasons:
 - (a) In any matter sufficiently difficult and controversial to come before the Court at all, it is inherently improbable that all the members of a Court of 9 or 11 Judges will be unanimous in their view. The appearance of unanimity produced by the absence of dissenting judgments would therefore to some extent be false and misleading.
 - (b) If the Court was not in fact unanimous, this is almost certain to become known, together with the names of those Judges who did not concur in the majority view. In these circumstances, we think it far better that those who dissent should say so in open court and give their reasons.
 - (c) We think that dissenting judgments have a very considerable political and psychological value. It is a much more satisfactory state of affairs from the point of view of the losing party if the arguments in support of its case are set out in a reasoned judgment, so that it is plain that they have been given full weight.
 - (d) From the point of view of the development of international law, dissenting judgments are also of value. They act as a useful commentary on the decision of the Court itself, the precise point and bearing of which is often brought out more strongly in the light of the dissenting judgments. In addition, the latter often

clarify subsidiary points of interest and importance which were not dealt with in the judgment of the Court because not directly necessary for the purpose of its findings.

- 82. For these reasons we would not only preserve the system of dissenting judgments, but go further than the relevant provision of the existing Statute, which only confers a right on dissenting Judges to deliver a separate opinion. In our view it should be obligatory on any Judge who dissents from the majority to state his reasons for so doing. There would of course be nothing to prevent two or more dissenting Judges from agreeing on a common opinion.
- 83. This brings us to the question of the decision of the Court itself. According to the present procedure, each Judge after conferring with his colleagues writes an individual opinion, and, it having thereby been ascertained where the majority lies, the majority opinions are then combined into one judgment. On the other hand, except in those cases where two or more dissenting Judges prefer to combine, the dissenting judgments appear as the individual opinions of their authors. This procedure may lead to the result that the dissenting judgments read more cogently and persuasively than the decision of the Court itself, for the reason that they are individual productions, and consequently have a force and cohesion which may be absent from a judgment which represents a synthesis of a number of individual opinions. Moreover, we think that the present system of producing the judgments of the Court might cause a tendency on the part of some Judges to rely unduly on their colleagues and to decide in accordance with what seems likely to prove the majority view.
- 84. The obvious way to get rid of these difficulties is to require every Judge, whether of the majority of the minority, to state his views in a reasoned opinion, there being of course nothing to prevent two or more Judges, whether of the majority or the minority, from concurring in a common statement. In theory this might lead to all the majority Judges concurring in one statement as they do at present, but in practice we think it unlikely that most Judges would not avail themselves of the right to give their individual views. If this recommendation were adopted the actual judgment of the Court would be confined to the "dispositif," i.e., the formal order or decision relevant to the matter before the Court. While, however, we are all agreed that each Judge should state his reasons in detail, some of us feel that the "despositif" should also be accompanied by a brief statement of the essential motives for the decision of the Court.

CHAPTER IX

APPEALS

85. The decisions of the Permanent Court of International Justice are final and not subject to any appeal, and this position should certainly be

maintained. 'If the Court consists, as we hope, of the best available Judges, there can be no object in any appeal from its decisions.

- 86. It is necessary to consider whether the Court should act as a court of appeal from other tribunals. The suggestion has been made that in the event of a number of countries instituting local or regional tribunals, such as the Central American Court of Justice which existed from 1908 to 1918, it might be desirable to provide for an appeal to the Court from such tribunals. This suggestion does not, however, commend itself to us. We feel that in practice there would be an appeal in every case of any importance, so that the only effective decision would be that of the Court, and the almost inevitable result, we fear, would be that the proceedings in the tribunals of first instance would come to be regarded as a waste of time and money, and that the tribunals themselves would consequently fall into disrepute.
- 87. Another suggestion which has been made requires consideration. Under the peace treaties of 1919 a large number of Mixed Arbitral Tribunals were established to deal with questions under the economic provisions of those treaties. The Tribunals had to interpret the provisions in question, and it almost inevitably resulted that, on occasion, the same provision was interpreted by different Tribunals in different ways. It has accordingly been suggested that in the event of a similar system being adopted in the peace settlement at the end of the present war, such divergencies should be avoided by providing an appeal from the Tribunals in question to the Court.
- 88. We are definitely of the opinion that it would be undesirable to give a general right of appeal from such tribunals to the Court. If this resulted in appeals being brought in a large majority of cases, this might well produce the same results as those indicated in paragraph 86 above in relation to local or regional tribunals, especially as a direct reversal of the whole judgment of such a tribunal would tend to undermine its authority and to discourage the judges. Moreover, a considerable part of the work of such tribunals would consist of deciding questions of fact and of municipal law, with which they would be better qualified to deal than the Court would. We consider, therefore, that even if an appeal to the Court from such tribunals was considered desirable it should, in any case, be confined to questions of treaty interpretation and of international law.
- 89. The question of whether and in what circumstances such an appeal should be allowed would fall to be decided, not in the Statute of the Court, but in the instrument which set up the tribunals in question. We do not, therefore, think it our duty to make any recommendation about it. We should, however, point out that the parties to proceedings before such tribunals would in all probability include private individuals. We have not considered it within our terms of reference to discuss whether the principle, laid down in Article 34 of the Statute of the Permanent Court, that only States can be parties to cases before it, should be maintained. But if it is, it would be necessary to provide that no appeal should lie to the Court unless

the Government of one of the parties took up the case, in which event the Governments of the parties, and not the parties themselves, would participate in the appeal proceedings before the Court. Strictly speaking, therefore, these would be new proceedings, not an appeal from the Court of first instance.

90. The suggestion has been made that, in view of the advantage of obtaining an authoritative interpretation of the relevant provision before instead of after the tribunal concerned has given its decision, it might be possible to employ a system of "evocation," such as was adopted in Article 588 of the Geneva Convention relating to Upper Silesia of the 15th May, 1922. that system any party to a suit or an administrative dispute before the national courts of Poland or Germany in the plebiscite area, the solution of which depended on a provision of the Geneva Convention, might request that the interpretation of that provision should be given by the Arbitral Tribunal of Upper Silesia instead of by the national court before which the case was pending. This system is understood to have worked well, and provided that the right to request "evocation" were, for the reason given in paragraph 89 above, confined to the Governments of the parties to a case, it might help to ensure uniformity of jurisprudence as regards the interpretation of the relevant treaties, without giving a general right of appeal from the decisions of the tribunals of first instance.

CHAPTER X

FINANCE

- 91. Articles 32 and 33 of the present Statute provide that the expenses of the Court are to be borne by the League of Nations in such manner as shall be decided by the Assembly on the proposal of the Council, and that the salaries and allowances of the Judges are to be fixed by the same method. The Assembly is also to fix the salary of the Registrar on the proposal of the Court, and the conditions under which retiring pensions may be given to Judges and the Registrar.
- 92. If effect is given to our recommendation (see Chapter III) that there should not in future be any organic connexion between the Court and any General International Organisation such as the League, it will follow automatically that the system whereby the finances of the Court are part of the budget of the League will cease, and will not be replaced by any similar system. Provision for financing the Court and fixing the salaries of the Judges, Registrar, &c., will have to be made in the Statute, or by means of some collateral agreement, and the salaries of the Judges and its other expenses will have to be borne directly by the Governments parties to the Court.
- 93. We would observe, however, that even if the Court were to be organically connected with some General International Organisation it would not follow that such connexion need extend to the realm of finance, and in our

opinion it should not do so. While it was no doubt convenient for the Court to be able to draw on the funds of the League, we think that all those who had experience of the inter-connexion of the Court's finances with those of the League will agree that the position was unsatisfactory. A number of members of the League were seriously in arrears with or failed to pay their contributions to the budget of the League, but went on enjoying all the benefits of adherence to the Court. Other countries, which had ceased to be members of the League, and were thus under no liability to contribute to its budget, also continued to adhere to the Court; yet there was no machinery for collecting any direct contribution from them towards the expenses of the Court, which continued to be provided for through the League.

- 94. In addition to the foregoing considerations of a practical order, we think there are objections of principle to the Court being financed through any General International Organisation, as tending to reflect on its independence. It would, we think, be altogether preferable that, whatever the character of any connexion the Court might have with the General International Organisation, its finances should be placed on a separate and self-contained footing.
- 95. We do not think this is the place to make detailed recommendations concerning the precise scale of salaries and allowances of the Judges, &c. The immediate situation could be met by providing that these should continue on their existing scale for the time being. We think that provision should be made for ensuring that salaries, &c., are not affected by any future fluctuations in the value of the particular currency in which they are paid.
- 96. It will be necessary to have regard to the accrued pension rights of past or existing Judges and officials of the Permanent Court of International Justice who have, or will have, already earned them, and to make due provision for such rights. This, however, forms part of the general question of the existing financial obligations of the League of Nations, and we only desire to draw attention to it.

CHAPTER XI

REGIONAL CHAMBERS

- 97. The preceding chapters of this Report proceed upon the assumption that the future International Court will, like the Permanent Court of International Justice, be a single body possessing universal jurisdiction, but with its seat in Europe. In the course of our discussions, however, the suggestion has been made that this conception may not altogether satisfy the needs of the world, and that it may be desirable to consider the possibility of the creation of something in the nature of a regional system for the Court. The considerations which have been adduced in support of this idea are as follows.
- 98. It has been suggested that a Court which is established in Europe and is, judging from past experience, likely to be predominantly European in

composition, may not be considered by non-European countries as altogether meeting their requirements. Without going into the question of whether it is permissible to speak of different legal systems in relation to international law, there are in fact differences between the points of view of lawyers of different parts of the world in approaching problems of international law, and these differences are not likely to be adequately represented in a single Court with a restricted number of judges, which might not be completely in touch with the particular conditions of fact and law existing in non-European countries. It has been urged in this connexion that this view is supported by the history of the Permanent Court of International Justice, where the number of Judges was increased from 11 to 15 mainly with the object of providing a larger representation of the different interests concerned. And it has been urged that the reduction in the number of the regular Judges of the Court which we propose in Chapter IV, Section 2, would be liable to increase the strength of such feelings.

99. In the proposals relating to national Judges made in Chapter IV, Section 4, we have endeavoured to meet the above considerations so far as is possible within the framework of a single Court. Some of our members, however, doubt whether those proposals go far enough to meet the point of view indicated in paragraph 98, and feel that unless further steps are taken there may be a risk of non-European countries losing interest in the Court and being tempted to set up separate judicial organisations.

100. This view is not accepted by all the members of the Committee, and in any case we are not in a position to judge to what extent it is likely to be held, nor whether it would be considered necessary or desirable to make provision to meet it. But we think it may be useful to set out two proposals which have been tentatively made in the course of our discussions, so that they may be available for consideration if desired. It will be seen that the first proposal is much more far-reaching than the second. It should be clearly understood that the Committee as a whole makes no recommendation in favour of either of these proposals, which are inserted simply in order to indicate possible means of dealing with this problem, should it be considered necessary to do so. Consequently the present chapter stands in a different position from the rest of our Report, and no reference to it appears in the summary of our recommendations which follows in Chapter XII.

First Proposal

101. The members of the Court, who, as proposed in Chapter IV, Section 4, would be all the national Judges nominated by the Governments parties to the Statute of the Court, would hold a first assembly to which they would bring declarations from their respective Governments, stating whether each Government desired its national Judge to sit as a Judge at the headquarters of the Court at the Hague, or whether it would prefer him to be attached to a separate chamber of the Court to be set up outside Europe. These govern-

mental declarations would have only advisory force and would not be binding on the assembly of the members of the Court. Any Government would also be free to leave the matter open, should it have no particular wishes. The assembly of the members of the Court would proceed to the examination of the desiderata of the Governments with regard to which chamber of the Court each national member should belong, and would (with the assistance of a small Committee established for the purpose) work out plans for the constitution of the different chambers of the Court. This done, they would proceed by a certain specified majority—e.g., two-thirds of the votes cast—to the setting up of the separate chambers.

102. The task of the assembly of the members of the Court would thus be not to elect Judges, but to assign to each Judge the work for which he should be particularly well prepared.

103. On the assumption of the creation of three chambers of the Court in all, one at the headquarters at The Hague and two outside Europe, each one needing the coöperation of some 12 or 13 Judges to ensure a Court of 9, this scheme would give the majority of the Governments an opportunity of seeing their national Judges actually participating in the work of the Court. Most of the national Judges would be nominated for membership of one or another of the chambers of the Court. As some might still not be required for actual Court business, they might be given special tasks outside the routine work of the Court—in particular, as lecturers on matters of international law at universities throughout the world. Some might be asked to undertake special research work of interest to the Court. If it were found unnecessary in the beginning to have so many as three chambers, a greater number of the members of the Court would be free to be used in this way. A large number of the Governments would still have the satisfaction of seeing one of their nationals participate in the judicial work of the Court.

104. The system here outlined would involve additional expense. This consideration does, however, not seem sufficiently important to prevent its realisation if the scheme itself were approved.

105. Each chamber would be competent to deal with cases brought against a State within its region, irrespective of the geographical location of the State which brought the case before the Court. If both parties to a case agreed, they should be free to choose the chamber where the case should be dealt with. If a Government happened to have cases simultaneously pending before more than one of the chambers of the Court, that Government would be entitled to appoint a second national Judge for that particular contingency.

106. It may be argued that this regional scheme would allow the different chambers to act on separate lines, thereby endangering the unity of international justice and jurisprudence. This would be, indeed, a most serious drawback. Arrangements would therefore have to be made whereby the chambers would be brought to cooperate closely. This would not be

achieved through a system of appeals from the other chambers to the Court at The Hague. The judgments of each chamber must be final. might be possible to arrange for two or three of the Judges of each chamber to hold office on that chamber for a shorter period—say, 3 years—than the the other members of the same chamber, who would sit for 9 years. chamber would then have a flow in and out of members from other parts of the world. These ambulating Judges might be chosen from amongst the Further, to secure unity of the Court, it junior members of the Court. would seem desirable to nominate a President to reside at the headquarters' of the Court, and two or three Vice-Presidents, each of whom would preside The Registry of The Hague should, under the over one of the chambers. authority of the President, undertake the coordination of the work of the different chambers and see that every case before one of the chambers was brought immediately to the notice of the others, with full particulars, thus enabling all the members of the Court to follow closely the work of each chamber. It might perhaps be possible to lay down the rule that each chamber, in cases considered by it to be of sufficient importance, could send one of its own Judges to sit as an additional Judge on the chamber before which the case was heard, with full power to participate in the deliberation and vote.

107. If such a regional system were adopted, the problem of advisory opinions would require to be re-examined. It seems appropriate to concentrate, as far as circumstances permitted, advisory opinions at the head-quarters of the Court at The Hague, leaving it to the President of the Court, in consultation with a small special committee of members of the Court nominated by him, to decide, on the circumstances of the case, where the matter should be dealt with.

108. It is suggested that such a regional scheme should not be considered as opposed to the unity of a Court of International Justice, but rather as a means of enabling such an institution to extend its activities throughout the world by adapting its organisation and procedure for that purpose. As suggested above, only through some such regional system can it be hoped to prevent the development in the future of competing international jurisdictions for non-European parts of the world.

Objections to the First Proposal

109. Even on the assumption that it is desirable to give some effect to considerations of a regional character in the constitution and working of the Court, the following objections may be felt to the particular method of producing this result which has just been described: There must necessarily be a certain inconsistency between a "regional" approach to the problem of a permanent international court of justice and the normal approach, which is concerned mainly with how to secure the most satisfactory Court considered simply as a Court. The regional approach is bound to be based largely on

110. It may be felt that the regional scheme described in paragrant 101-108 above, despite its attractions from certain points of view, we tend to have precisely the result feared. It would clearly give the maximal play to considerations of a regional character and by that very fact would make it more difficult to maintain the inner cohesion of the Court. To main objections to the scheme may be stated as follows:

- (a) With a single Court of nine Judges (or even with a somewhat larger Court so long as it was a single Court) a very high standard of judicial integrity and competence should be procurable, and consequently a very authoritative standing for the Court and its decisions. On the other hand, with (in effect) two or three Courts (even though nominally different chambers of a single Court) and with a total number of Judges of about 30 or 40, there would be an inevitable decline in this standard: or at any rate, it would become much more difficult consistently to achieve the standard to be expected with a single Court.
- (b) There would be a considerable likelihood that one (though not necessarily always or at all times the same) chamber of the Court would prove a good deal "stronger" than its fellows. This would lead to invidious comparisons between the decisions given by the different chambers, and possibly to undesirable attempts (e.g., by the mutual consent of the parties) to secure hearings before the "strong" chamber rather than the appropriate regional one. Any process calculated to bring certain chambers into disrepute or others into marked prominence would certainly tend to have a disruptive effect on the life of the Court as a whole and as an institution.
- (c) The scheme under discussion is, in essence, one for a number of separate Courts, and lacks adequate provision to ensure uniformity and continuity of jurisprudence. Although it may contemplate a central registry and administrative system for all the chambers, they would have to be judicially co-equal and autonomous; yet the surroundings and the political, legal and psychological "climates" in which the chambers would sit and work would differ appreciably, and the personnel of each chamber would (even

with a certain amount of interchange between the chambers) be drawn, for the most part, from an entirely different part of the world from that of the others. In these circumstances, it is hardly possible that considerable divergencies between the practice, procedure and jurisprudence of the various chambers should not develop. These divergencies could easily widen into differences or even positive contradictions, a result which (given the equal authority of each chamber) would not only undermine the standing of the Permanent Court as an institution, but also the moral force of the individual decisions. These might be binding in the particular case between the parties thereto, but so long as there was a possibility that another chamber might reach a different conclusion on a similar set of facts, the decision would lack finality from the general legal and judicial standpoint.

(d) No doubt the suggested interchange of judges and other special measures proposed in paragraph 106 above would assist in promoting uniformity and continuity of practice and jurisprudence between the various chambers, but it is doubtful whether these steps would be more than palliatives. In this connexion two factors have to be borne in mind. In the first place, although there may be great differences in the conditions obtaining in different parts of the world, there is a considerable similarity between the types of justiciable disputes between States calling for decision by an International Court. Secondly, the issues involved in these cases are usually of a highly controversial character; if they were not, and if they did not involve difficult and possibly to some extent unsettled points of law and fact, it is unlikely that reference to the Permanent Court would be required at all. In these circumstances, and in view of the fact that decisions might be given by a bare majority. Courts of equal honesty and competence might well reach quite different con-In a situation in which there are two or perhaps three Courts, all judicially autonomous and, formally, of equal authority, and all dealing with the same kind of point, contradictory or anyhow inconsistent decisions must be expected. Such a result would probably lead to a demand for a "super-Permanent Court" to sit as a court of appeal from the decisions of the regional chambers, i.e., in effect the same proposal as that which we rejected in Chapter IX, paragraph 86. There is, therefore, reason to fear that the scheme under discussion would work out in very much the same way as the old Permanent Court of Arbitration, which, by reason of its constitution, inevitably failed to give adequate effect to the principles of consistency and continuity.

- (e) The main object of any regional scheme must be to promote confidence in the Court by bringing it, both physically and from the standpoint of atmosphere, nearer to the countries who may appear as litigants before it; and by increasing the chances that litigants will find judges of their own nationality acting as regular Judges of the Court. There is, however, no object in promoting confidence in these directions if this involves a degree of decentralisation liable to lead to an equal or greater loss of confidence in others, by lowering the standard of judicial competence and by casting doubt in various ways on the legal merits or finality of the decisions given. Unless a regional scheme is such as to be plainly free from these defects, it must defeat its own object and should be rejected.
- (f) A subsidiary objection to the particular scheme set forth in paragraphs 101-108 is that the various tasks imposed on the Assembly of National Judges, as described in paragraphs 101 and 102, might well prove to be of a highly invidious character, and to place those concerned in a position of considerable embarrassment.

Second Proposal

111. An alternative scheme, which would appear to give a considerable degree of play to considerations of a regional character while being in the main free from the defects which have been noticed, might be found on the following lines: There would be a single Permanent Court, as at present, with a fixed number of nine judges and one central seat. If in any case all the parties to a suit wished the hearing to be on regional lines and to be held in a particular part of the world, say the American Continent, the Court would then be constituted for that particular case as follows: there would be the national Judge of each of the parties; there would also be two "juges suppléants" belonging to American States and chosen from the national Judges appointed by the various Governments. These could either be selected by agreement between the parties or nominated by the Court. Finally, there would be five of the permanent Judges of the Court, including the President or Vice-President. The hearing would be in some part of the American Continent. If one of the parties desired the Court to be constituted in this manner, but the other did not (e.g., in a dispute between an American and a European country), this issue would be left to the Court itself (or perhaps to the President) to decide. The same procedure could, if desired, be applied to obtaining advisory opinions.

112. In favour of this scheme it may be said that it would secure uniformity of jurisprudence and a coherent and self-consistent Court, while going at least some considerable distance towards satisfying regional aspirations. There are obviously a number of possible variations of the scheme, by which satisfaction to the regional principle might equally be given without

sacrificing the principle of coherence and consistency. But it clearly would not secure, to the same extent as the first proposal, the objects with which that proposal has been made. It is, in fact, impossible to produce any proposal which would ensure all the objects in question without being open to at any rate some of the objections indicated in paragraphs 109 and 110.

CHAPTER XII

SUMMARY OF RECOMMENDATIONS AND CONCLUSIONS

CHAPTER I.—INTRODUCTION

- 113. In general the Statute of the Court has worked well and should be retained as the general structure of the future Court. In the case of provisions as to which no recommendation is made, we consider that no amendment is called for (paragraphs 4 and 5).
- 114. Whether a new Court be set up or the existing one continued, the present name and seat of the Court should be retained (paragraphs 3 and 7).

CHAPTER II.—NEED FOR A NEW INTERNATIONAL AGREEMENT ABOUT THE COURT

115. On the assumption that an International Court in some form will be required after the war, it will not be sufficient to rely on the automatic continuance and functioning of the existing Permanent Court of International Justice. A new international agreement will be needed, whether the object be to set up a new Permanent Court or merely to continue the old one in existence (paragraphs 8-11).

CHAPTER III.—CONNEXION BETWEEN THE COURT AND A GENERAL INTER-NATIONAL ORGANISATION

116. The existing connexion between the Court and the League of Nations should be discontinued and should not, for the present at any rate, be replaced by an *organic* ¹ connexion with any new International Organisation. This need not exclude all connexion between the Court and the International Organisation. The Court would be part of the machinery at the disposal of the Organisation; and the constitution of the Organisation might lay down the conditions in which its members would be bound to have recourse to the Court, and provide measures for ensuring that the decisions of the Court were complied with. A connexion of this character would not be created by the Statute of the Court, but by the constitution of the Organisation (paragraphs 12–20).

¹ By organic connexion is meant that the Court was established by one of the articles of the League Covenant, that its judges were elected by the Assembly and Council of the League and that its expenses were a charge on the budget of the League, &c.

CHAPTER IV.—CONSTITUTION OF THE COURT

Section 1.—Qualifications and Nationality of Judges

- 117. The requirements of Article 2 of the existing Statute of the Court should be maintained as they stand, so that the Court would be composed of "a body of independent Judges, elected regardless of their nationality from amongst persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law" (paragraph 21).
- 118. The question of the weight to be given to the various factors of judicial standing, academic or forensic attainments, political, administrative or diplomatic experience in choosing the Judges of the Court is one which cannot satisfactorily be dealt with in the Statute of the Court and must be left to the judgment of those responsible for the nomination and election of candidates. It is, however, desirable that a certain balance should be maintained between those Judges possessed of previous general judicial experience and those having a specialised knowledge of international law. There has been a tendency for the former to be under-represented, and some increase in the proportion of Judges who have had judicial experience in their own countries is desirable (paragraph 22).
- 119. It is essentially inconsistent with the principle of electing the best candidates, irrespective of nationality, that there should be any system directed to securing the permanent representation of certain countries or groups of countries amongst the Judges of the Court. Any such system also tends to produce a large unwieldy Court instead of the reduced Court which we recommend. There is no need to continue any such system (paragraphs 25 and 26).
- 120. Any specific attempt, such as that made in Article 9 of the Statute, to secure the representation of particular legal systems, as such, should be abandoned. On the other hand, there is great value in the representation among the Judges of the Court of different types of mind and methods of legal thought, and this would indirectly have the consequence that certain countries would habitually be represented. If the principle of selecting the best available candidates is acted on, it will almost inevitably result that different schools of thought would in practice find representation, and no special steps to secure this end would be necessary (paragraphs 23 and 24).
- 121. Everything points to the paramount importance of selecting the best available candidates irrespective of other considerations. Failing this, a demand is certain to grow up for a larger Court and for the representation of particular countries or groups of countries as such (paragraph 27).
- 122. The existing provisions of the Statute directed to securing and safeguarding the independence of the Judges are satisfactory and require no change (paragraph 28).

Section 2.—Number of Judges

123. The present number of fifteen judges is too high to be conducive to the satisfactory working of the Court and should be reduced to nine, exclusive of *ad hoc* Judges. The quorum should be seven (paragraphs 29–32).

Section 3.—Period of Appointment

124. The present system of electing the Judges for a period of nine years is satisfactory and should be continued (paragraphs 33 and 34).

125. On the other hand, it is undesirable to continue the existing system whereby the entire Court goes out of office every nine years. This should be replaced by a system under which one-third of the Judges would go out of office every three years, when an election would be held to fill these vacancies. In order to get this system working, special arrangements would be necessary during the first years after its adoption. Any Judge elected to fill an interim vacancy caused by the death or retirement of a Judge would serve only for the remainder of his predecessor's term of office. All Judges should, as at present, be eligible for re-election (paragraph 35).

126. There should be no age limit at which Judges should be called on to retire. If, however, an age limit were adopted it should not be fixed too low. Seventy-two would be a minimum, and 75 probably preferable (paragraphs 36 and 37).

Section 4.—National and Supplementary Judges

127. The existing rule, which permits Judges of the nationality of any of the parties to a case to sit in the case, and also provides that any party may, if there is no Judge of its nationality on the Court, appoint some person (known as a "national" or *ad hoc* Judge) to sit in the case, should be maintained (paragraphs 38 and 39).

128. In order to spread interest in the Court, and to give a more permanent and assured position to the national Judges, each country party to the Statute should nominate one candidate, who, as such, would, *ipso facto*, become a member (though not a Judge) of the Court and the national judge of his country. These national judges would also be available to sit when required as supplementary Judges of the Court to make up the number of nine, and for other purposes (paragraphs 40–44).

CHAPTER V.—METHOD OF NOMINATION AND ELECTION

Section 1.—Nomination

129. The existing system of nomination of candidates by the national groups in the Permanent Court of Arbitration should be replaced by a system of direct nomination by Governments (paragraph 45).

130. Each of the Governments concerned should nominate one candidate only, who should be one of its nationals (paragraph 46).

131. The provisions of Article 6 of the Statute recommending Governments to consult the appropriate judicial, legal and academic authorities in their respective countries before making nominations should be retained as a recommendation (paragraph 47).

Section 2.—Election

- 132. The method of double election of Judges by the Assembly and Council of the League should be discontinued and replaced by direct election by the Governments from among the corpus of candidates nominated (paragraphs 48 and 49).
- 133. Unless it proved possible to combine the elections with meetings of the Assembly of the future General International Organisation, special meetings of Governments would have to be held every three years. The inconvenience of so frequent meetings might be reduced by conducting the first ballot in writing, each Government sending its vote to an agreed headquarters Government. In that case subsequent ballots might be conducted by the diplomatic representatives of the Governments concerned at some convenient capital (e.g., the seat of the Court), assisted if desired by an ad hoc representative of any Government wishing to send one (paragraphs 50 and 51).
- 134. In the event of the subsequent establishment of an organic connexion between the Court and the future Political Organisation, the task of election could then be transferred to the appropriate organisation of the latter body (paragraph 52).
- 135. Judges should, as at present, be elected by an absolute majority of the votes cast (paragraph 53).

CHAPTER VI.—JURISDICTION OF THE COURT

- 136. It should be open to all States, whether or not members of the future General International Organisation, to become parties to the Statute of the Court; but no country should be permitted to have recourse to the Court which is not a party to its Statute (paragraph 54).
- 137. Since it is of prime importance that the jurisdiction of the Court should be confined to matters that are really "justiciable," and that all possibility should be excluded of the Court being used to deal with cases which are essentially political in their nature and require to be dealt with by political means, a more precise definition of the jurisdiction of the Court is required than that contained in the existing Statute (paragraphs 55–57).
- 138. The Statute should contain no provision making the jurisdiction of the Court compulsory for the adhering States. On the other hand, there would, as at present, be nothing to prevent countries voluntarily accepting compulsory jurisdiction by other means, either generally or in defined cases, e.g., under particular bilateral or multilateral conventions in regard to disputes arising thereunder, or by means of a general agreement between

two or more States to have recourse to the Court in justiciable disputes arising between them, or by acceptance of the existing "Optional Clause," which should be retained. There would equally be nothing to prevent compulsory recourse to the Court being made a condition of membership of any future General International Organisation, to such extent and on such terms as its members thought proper and decided to lay down in the Constitution of the Organisation. In such event the Constitution of the Organisation could also set out the means whereby the decisions of the Court in these cases should be enforced (paragraphs 58–60).

- 139. In imposing any general obligation on States to have compulsory recourse to the Court as contemplated in paragraph 138 above, it will almost certainly be necessary to allow countries to make certain reservations, as in the case of acceptance of the "Optional Clause" (paragraph 61).
- 140. The law to be applied by the Court is set out in Article 38 of the Statute, and, although the wording of this provision is open to certain criticisms, it has worked well in practice and its retention is recommended (paragraph 62).
- 141. Article 59 of the Statute, which provides that "The decision of the Court has no binding force except between the parties and in respect of that particular case," should be maintained (paragraph 63).

CHAPTER VII.—Advisory Opinions

- 142. The Court's jurisdiction to give Advisory Opinions should be maintained (paragraphs 64-68).
- 143. The right to ask for such an opinion should not be confined to the executive organs of any future General International Organisation, but should be extended to all international associations of an inter-State or intergovernmental character possessing the necessary status, and to any two or more States acting in concert (paragraphs 69–71).
- 144. References should be confined to matters of law which fall within the jurisdiction of the Court. They should be made on the basis of a definite question and of a fully stated and agreed set of facts (paragraphs 69 and 72).
- 145. The Court should be given the necessary competence to reject any application not in conformity with paragraphs 143 or 144, or which, in its opinion, involved any other abuse of the jurisdiction relating to Advisory Opinions (paragraphs 72–74).

CHAPTER VIII.—PROCEDURE

Section 1.—General

146. The procedure of the Court should, in general, be left to be settled by the Court itself by Rules of Court. From this point of view, some of the provisions about procedure in the Statute could be eliminated and dealt with by Rules of Court. Subject to this, the procedure of the Court has

worked well in practice and calls for little change (paragraphs 76 and 77). 147. It is desirable to regulate oral proceedings before the Court in such a way as to avoid a general repetition of matters already adequately covered by the written pleadings, but the matter is one for the discretion of the Court rather than for written rules (paragraph 77).

Section 2.—Language

148. The question of the languages of the Court is one of principle and should be dealt with in the Statute, except that the question of translations or interpretations from one language to another in the course of the written pleadings or oral hearing should be left to be settled by the Court. The existing rule that French and English are the official languages of the Court should be retained (paragraph 78).

Section 3.—Method of Producing Judgments

- 149. Subject to paragraph 150 below, the present method for producing Judgments is satisfactory and should be maintained. The majority rule for decisions should be maintained, despite the fact that it may result in decisions being given by a majority of only one (paragraphs 79 and 80).
- 150. The right to give dissenting judgments is of great value and should be retained. Further, all Judges, whether of the majority or the minority, should state their views in separate Judgments, though it would remain open to any two or more of them to combine in a common judgment. The actual decision of the Court would then be confined to the "dispositif" or formal order or ruling relative to the matter before the Court. The reasons for or against that decision would, however, be set out in a number of separate judgments (paragraphs 81–84).

CHAPTER IX.—APPEALS

- 151. The existing provision of the Statute that the decisions of the Court are final and not subject to appeal should be maintained (paragraph 85).
- 152. It is not desirable that the Court should act as a court of appeal from local or regional tribunals administering international law (paragraph 86).
- 153. It may be found desirable to confer on the Court some sort of appellate jurisdiction from tribunals which may be set up under the Peace Treaties to deal with certain questions arising thereunder, analogous to the Mixed Arbitral Tribunals set up after the last war, with the object of securing uniformity of jurisprudence in the interpretation and application of the relevant provisions of the Peace Treaties. No direct right of appeal to the Court from the actual decisions, as such, of these tribunals should be established. On the other hand, it would be possible to set up a procedure whereby the opinion of the Court on matters of treaty interpretation or international law could be obtained for the guidance of the tribunals concerned. This might be done by some system of "evocation," which would probably suffice in

practice to secure general uniformity of jurisprudence. This would be a matter to be decided by the instruments setting up the tribunals and not by the Statute of the Court (paragraphs 87–90).

CHAPTER X.—FINANCE

154. The finances of the Court, hitherto part of the budget of the League of Nations, should be placed on an independent and self-contained basis, whether or not there is in other respects any organic connexion between the Court and a future General International Organisation. Provision for financing the Court, and for fixing the salaries and pensions of the Judges, Registrar, &c., should be made by the Statute or by collateral agreements between the Governments parties thereto. The existing scale of salaries and allowances, &c., should be provisionally continued. Provision should be made for ensuring that these are not affected by fluctuations in the value of the currency in which they are paid (paragraphs 91–95).

155. As part of the general question of regulating the existing financial obligations of the League, it will be necessary to have regard to the accrued pension rights of past and present Judges and officials of the Court (paragraph 96).

WILLIAM MALKIN, Chairman

G. KAECKENBEECK

F. HAVLICEK

R. Cassin

ANDRÉ GROS

C. A. STAVROPOULOS

G. SCHOMMER

E. STAR-BUSMANN

R. M. CAMPBELL

ERIK COLBAN

B. Winiarski

G. G. FITZMAURICE, Secretary

DUMBARTON OAKS PROPOSALS

STATEMENT BY THE PRESIDENT OF THE UNITED STATES REGARDING THE DUMBARTON OAKS PROPOSALS

October 9, 1944

I wish to take this opportunity to refer to the work of the Dumbarton Oaks Conversations between the delegations of the United States, the United Kingdom, the Soviet Union, and China on the plans for an international organization for the maintenance of peace and security.

The conversations were completed Saturday, October 7, 1944, and proposals were submitted to the four Governments for their consideration. These proposals have been made public to permit full discussion by the

people of this country prior to the convening of a wider conference on this all-important subject.

Although I have not yet been able to make a thorough study of these proposals, my first impression is one of extreme satisfaction, and even surprise, that so much could have been accomplished on so difficult a subject in so short a time. This achievement was largely due to the long and thorough preparations which were made by the Governments represented, and in our case, was the result of the untiring devotion and care which the Secretary of State has personally given to this work for more than two and a half years—indeed for many years.

The projected international organization has for its primary purpose the maintenance of international peace and security and the creation of the conditions that make for peace.

We now know the need for such an organization of the peace-loving peoples and the spirit of unity which will be required to maintain it. Aggressors like Hitler and the Japanese war lords organize for years for the day when they can launch their evil strength against weaker nations devoted to their peaceful pursuits. This time we have been determined first to defeat the enemy, assure that he shall never again be in position to plunge the world into war, and then to so organize the peace-loving nations that they may through unity of desire, unity of will, and unity of strength be in position to assure that no other would-be aggressor or conqueror shall even get started. That is why from the very beginning of the war, and paralleling our military plans, we have begun to lay the foundations for the general organization for the maintenance of peace and security.

It represents, therefore, a major objective for which this war is being fought, and as such, it inspires the highest hopes of the millions of fathers and mothers whose sons and daughters are engaged in the terrible struggle and suffering of war.

The projected general organization may be regarded as the keystone of the arch and will include within its framework a number of specialized economic and social agencies now existing or to be established.

The task of planning the great design of security and peace has been well begun. It now remains for the nations to complete the structure in a spirit of constructive purpose and mutual confidence.

STATEMENT BY THE SECRETARY OF STATE OF THE UNITED STATES October 9, 1944

The proposals for an international organization for the maintenance of international peace and security, upon which the representatives of the United States, the United Kingdom, the Soviet Union, and China have agreed during the conversations at Dumbarton Oaks, have been submitted to the four Governments and are today being made generally available to the people of this Nation and of the world.

All of us have every reason to be immensely gratified by the results achieved at these conversations. To be sure, the Proposals in their present form are neither complete nor final. Much work still remains to be done before a set of completed proposals can be placed before the peace-loving nations of the world as a basis of discussion at a formal conference to draft a charter of the projected organization for submission to the governments. But the document which has been prepared by the able representatives of the four participating nations and has been agreed to by them as their recommendation to their respective Governments is sufficiently detailed to indicate the kind of an international organization which, in their judgment, will meet the imperative need of providing for the maintenance of international peace and security.

These proposals are now being studied by the four Governments which were represented at the Washington Conversations and which will give their urgent attention to the next steps which will be necessary to reach the goal of achieving the establishment of an effective international organization.

These proposals are now available for full study and discussion by the peoples of all countries.

We in this country have spent many months in careful planning and wide consultation in preparation for the conversations which have just been concluded. Those who represented the Government of the United States in these discussions were armed with the ideas and with the results of thinking contributed by numerous leaders of our national thought and opinion, without regard to political or other affiliations.

It is my earnest hope that, during the time which must elapse before the convocation of a full United Nations conference, discussions in the United States on this all-important subject will continue to be carried on in the same non-partisan spirit of devotion to our paramount national interest in peace and security which has characterized our previous consultations. I am certain that all of us will be constantly mindful of the high responsibility for us and for all peace-loving nations which attaches to this effort to make permanent a victory purchased at so heavy a cost in blood, in tragic suffering, and in treasure. We must be constantly mindful of the price which all of us will pay if we fail to measure up to this unprecedented responsibility.

It is, of course, inevitable that when many governments and peoples attempt to agree on a single plan the result will be in terms of the highest common denominator rather than of the plan of any one nation. The organization to be created must reflect the ideas and hopes of all the peace-loving nations which participate in its creation. The spirit of cooperation must manifest itself in mutual striving to attain the high goal by common agreement.

The road to the establishment of an international organization capable of effectively maintaining international peace and security will be long. At

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times it will be difficult. But we cannot hope to attain so great an objective without constant effort and unfailing determination that the sacrifices of this war shall not be in vain.

REPORT TO THE SECRETARY OF STATE

Submitted by the Chairman of the American Delegation to the Washington Conversations on International Organization

October 7, 1944

I take great pleasure in submitting to you the results of the exploratory conversations on international organization held in Washington between representatives of the Governments of the United States, the United Kingdom, the Soviet Union, and China. The first phase of the conversations, between representatives of the United States, the United Kingdom, and the Soviet Union, took place from August 21 to September 28; the second phase, between representatives of the United States, the United Kingdom, and China, was held from September 29 to October 7. The results of the work accomplished in both phases are embodied in the following Proposals which each of the four delegations is transmitting to its respective Government as the unanimously agreed recommendations of the four delegations.

I am happy to report that the conversations throughout were characterized by a spirit of complete cooperation and great cordiality among all participants, the proof of which is evident in the wide area of agreement covered in the Proposals. The few questions which remain for further consideration, though important, are not in any sense insuperable, and I recommend that the necessary steps for obtaining agreement on these points be taken as soon as possible.

It is proper to emphasize, at the conclusion of these preliminary conversations, that the Proposals as they are now submitted to the four Governments comprise substantial contributions from each of the delegations. It is my own view, which I believe is shared by all the participants, that the agreed Proposals constitute an advance over the tentative and preliminary proposals presented by each delegation. This has resulted from a single-minded effort of all the delegations at Dumbarton Oaks to reach a common understanding as to the most effective international organization capable of fulfilling the hopes of all peoples everywhere.

I wish to take this opportunity to express my grateful recognition of the contribution to the successful outcome of these conversations made by the members of the American delegation and to commend the advisers and the staff for their most helpful assistance. Above all, I wish to express my profound appreciation to the President and to you, Mr. Secretary, for the constant advice and guidance without which our work could not have been accomplished with such constructive and satisfactory results.

STATEMENT ISSUED SIMULTANEOUSLY BY THE PARTICIPATING GOVERNMENTS

October 9, 1944

The Government of the United States has now received the report of its delegation to the conversations held in Washington between August 21 and October 7, 1944, with the delegations of the United Kingdom, the Union of Soviet Socialist Republics, and the Republic of China on the subject of an international organization for the maintenance of peace and security.

There follows a statement of tentative proposals indicating in detail the wide range of subjects on which agreement has been reached at the conversations.

The Governments which were represented in the discussions in Washington have agreed that after further study of these proposals they will as soon as possible take the necessary steps with a view to the preparation of complete proposals which could then serve as a basis of discussion at a full United Nations conference.

PROPOSALS FOR THE ESTABLISHMENT OF A GENERAL INTERNATIONAL ORGANIZATION

October 7, 1944

There should be established an international organization under the title of The United Nations, the Charter of which should contain provisions necessary to give effect to the proposals which follow.

CHAPTER I. PURPOSES

The purposes of the Organization should be:

- 1. To maintain international peace and security; and to that end to take effective collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means adjustment or settlement of international disputes which may lead to a breach of the peace;
- 2. To develop friendly relations among nations and to take other appropriate measures to strengthen universal peace:
- 3. To achieve international cooperation in the solution of international economic, social and other humanitarian problems; and
- 4. To afford a center for harmonizing the actions of nations in the achievement of these common ends.

CHAPTER II. PRINCIPLES

In pursuit of the purposes mentioned in Chapter I the Organization and its members should act in accordance with the following principles:

1. The Organization is based on the principle of the sovereign equality of all peace-loving states.

- 2. All members of the Organization undertake, in order to ensure to all of them the rights and benefits resulting from membership in the Organization, to fulfill the obligations assumed by them in accordance with the Charter.
- 3. All members of the Organization shall settle their disputes by peaceful means in such a manner that international peace and security are not endangered.
- 4. All members of the Organization shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organization.
- 5. All members of the Organization shall give every assistance to the Organization in any action undertaken by it in accordance with the provisions of the Charter.
- 6. All members of the Organization shall refrain from giving assistance to any state against which preventive or enforcement action is being undertaken by the Organization.

The Organization should ensure that states not members of the Organization act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

CHAPTER III. MEMBERSHIP

1. Membership of the Organization should be open to all peace-loving states.

CHAPTER IV. PRINCIPAL ORGANS

- 1. The Organization should have as its principal organs:
 - a. A General Assembly;
 - b. A Security Council;
 - c. An international court of justice; and
 - d. A Secretariat.
- 2. The Organization should have such subsidiary agencies as may be found necessary.

CHAPTER V. THE GENERAL ASSEMBLY

Section A. Composition

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All members of the Organization should be members of the General Assembly and should have a number of representatives to be specified in the Charter.

- Section B. Functions and Powers

1. The General Assembly should have the right to consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments; to discuss any questions relating to the maintenance of inter-

national peace and security brought before it by any member or members of the Organization or by the Security Council; and to make recommendations with regard to any such principles or questions. Any such questions on which action is necessary should be referred to the Security Council by the General Assembly either before or after discussion. The General Assembly should not on its own initiative make recommendations on any matter relating to the maintenance of international peace and security which is being dealt with by the Security Council.

- 2. The General Assembly should be empowered to admit new members to the Organization upon recommendation of the Security Council.
- 3. The General Assembly should, upon recommendation of the Security Council, be empowered to suspend from the exercise of any rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council. The exercise of the rights and privileges thus suspended may be restored by decision of the Security Council. The General Assembly should be empowered, upon recommendation of the Security Council, to expel from the Organization any member of the Organization which persistently violates the principles contained in the Charter.
 - 4. The General Assembly should elect the non-permanent members of the Security Council and the members of the Economic and Social Council provided for in Chapter IX. It should be empowered to elect, upon recommendation of the Security Council, the Secretary-General of the Organization. It should perform such functions in relation to the election of the judges of the international court of justice as may be conferred upon it by the statute of the court.
 - 5. The General Assembly should apportion the expenses among the members of the Organization and should be empowered to approve the budgets of the Organization.
 - 6. The General Assembly should initiate studies and make recommendations for the purpose of promoting international cooperation in political, economic and social fields and of adjusting situations likely to impair the general welfare.
 - 7. The General Assembly should make recommendations for the coördination of the policies of international economic, social, and other specialized agencies brought into relation with the Organization in accordance with agreements between such agencies and the Organization.
 - 8. The General Assembly should receive and consider annual and special reports from the Security Council and reports from other bodies of the Organization.

Section C. Voting.

1. Each member of the Organization should have one vote in the General Assembly.

2. Important decisions of the General Assembly, including recommendations with respect to the maintenance of international peace and security; election of members of the Security Council; election of members of the Economic and Social Council; admission of members, suspension of the exercise of the rights and privileges of members, and expulsion of members; and budgetary questions, should be made by a two-thirds majority of those present and voting. On other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, the decisions of the General Assembly should be made by a simple majority vote.

Section D. Procedure

- 1. The General Assembly should meet in regular annual sessions and in such special sessions as occasion may require.
- 2. The General Assembly should adopt its own rules of procedure and elect its President for each session.
- 3. The General Assembly should be empowered to set up such bodies and agencies as it may deem necessary for the performance of its functions.

CHAPTER VI. THE SECURITY COUNCIL

Section A. Composition

The Security Council should consist of one representative of each of eleven members of the Organization. Representatives of the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Republic of China, and, in due course, France, should have permanent seats. The General Assembly should elect six states to fill the non-permanent seats. These six states should be elected for a term of two years, three retiring each year. They should not be immediately eligible for reelection. In the first election of the non-permanent members three should be chosen by the General Assembly for one-year terms and three for two-year terms.

Section B., Principal Functions and Powers

- 1. In order to ensure prompt and effective action by the Organization, members of the Organization should by the Charter confer on the Security Council primary responsibility for the maintenance of international peace and security and should agree that in carrying out these duties under this responsibility it should act on their behalf.
- 2. In discharging these duties the Security Council should act in accordance with the purposes and principles of the Organization.
- 3. The specific powers conferred on the Security Council in order to carry out these duties are laid down in Chapter VIII.
 - 4. All members of the Organization should obligate themselves to accept

the decisions of the Security Council and to carry them out in accordance with the provisions of the Charter.

5. In order to promote the establishment and maintenance of international peace and security with the least diversion of the world's human and economic resources for armaments, the Security Council, with the assistance of the Military Staff Committee referred to in Chapter VIII, Section B, paragraph 9, should have the responsibility for formulating plans for the establishment of a system of regulation of armaments for submission to the members of the Organization.

Section C. Voting

(Note.—The question of voting procedure in the Security Council is still under consideration.)

Section D. Procedure

- 1. The Security Council should be so organized as to be able to function continuously and each state member of the Security Council should be permanently represented at the headquarters of the Organization. It may hold meetings at such other places as in its judgment may best facilitate its work. There should be periodic meetings at which each state member of the Security Council could if it so desired be represented by a member of the government or some other special representative.
- 2. The Security Council should be empowered to set up such bodies or agencies as it may deem necessary for the performance of its functions including regional subcommittees of the Military Staff Committee.
- 3. The Security Council should adopt its own rules of procedure, including the method of selecting its President.
- 4. Any member of the Organization should participate in the discussion of any question brought before the Security Council whenever the Security Council considers that the interests of that member of the Organization are specially affected.
- 5. Any member of the Organization not having a seat on the Security Council and any state not a member of the Organization, if it is a party to a dispute under consideration by the Security Council, should be invited to participate in the discussion relating to the dispute.

CHAPTER VII. AN INTERNATIONAL COURT OF JUSTICE

- 1. There should be an international court of justice which should constitute the principal judicial organ of the Organization.
- 2. The court should be constituted and should function in accordance with a statute which should be annexed to and be a part of the Charter of the Organization.
 - 3. The statute of the court of international justice should be either (a) the Statute of the Permanent Court of International Justice, continued in force

with such modifications as may be desirable or (b) a new statute in the preparation of which the Statute of the Permanent Court of International Justice should be used as a basis.

- 4. All members of the Organization should ipso facto be parties to the statute of the international court of justice.
- 5. Conditions under which states not members of the Organization may become parties to the statute of the international court of justice should be determined in each case by the General Assembly upon recommendation of the Security Council.

CHAPTER VIII. ARRANGEMENTS FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY INCLUDING PREVENTION AND SUPPRESSION OF AGGRESSION

Section A. Pacific Settlement of Disputes

- 1. The Security Council should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security.
- 2. Any state, whether member of the Organization or not, may bring any such dispute or situation to the attention of the General Assembly or of the Security Council.
- 3. The parties to any dispute the continuance of which is likely to endanger the maintenance of international peace and security should obligate themselves, first of all, to seek a solution by negotiation, mediation, conciliation, arbitration or judicial settlement, or other peaceful means of their own choice. The Security Council should call upon the parties to settle their dispute by such means.
- 4. If, nevertheless, parties to a dispute of the nature referred to in paragraph 3 above fail to settle it by the means indicated in that paragraph, they should obligate themselves to refer it to the Security Council. The Security Council should in each case decide whether or not the continuance of the particular dispute is in fact likely to endanger the maintenance of international peace and security, and, accordingly, whether the Security Council should deal with the dispute, and, if so, whether it should take action under paragraph 5.
- 5. The Security Council should be empowered, at any stage of a dispute of the nature referred to in paragraph 3 above, to recommend appropriate procedures or methods of adjustment.
- 6. Justiciable disputes should normally be referred to the international court of justice. The Security Council should be empowered to refer to the court, for advice, legal questions connected with other disputes.
 - 7. The provisions of paragraph 1 to 6 of Section A should not apply to

situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned.

- Section B. Determination of Threats to the Peace or Acts of Aggression and Action with Respect Thereto
- 1. Should the Security Council deem that a failure to settle a dispute in accordance with procedures indicated in paragraph 3 of Section A, or in accordance with its recommendations made under paragraph 5 of Section A, constitutes a threat to the maintenance of international peace and security, it should take any measures necessary for the maintenance of international peace and security in accordance with the purposes and principles of the Organization.
- 2. In general the Security Council should determine the existence of any threat to the peace, breach of the peace or act of aggression and should make recommendations or decide upon the measures to be taken to maintain or restore peace and security.
- 3. The Security Council should be empowered to determine what diplomatic, economic, or other measures not involving the use of armed force should be employed to give effect to its decisions, and to call upon members of the Organization to apply such measures. Such measures may include complete or partial interruption of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic and economic relations.
- 4. Should the Security Council consider such measures to be inadequate, it should be empowered to take such action by air, naval or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea or land forces of members of the Organization.
- 5. In order that all members of the Organization should contribute to the maintenance of international peace and security, they should undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements concluded among themselves, armed forces, facilities and assistance necessary for the purpose of maintaining international peace and security. Such agreement or agreements should govern the numbers and types of forces and the nature of the facilities and assistance to be provided. The special agreement or agreements should be negotiated as soon as possible and should in each case be subject to approval by the Security Council and to ratification by the signatory states in accordance with their constitutional processes.
- 6. In order to enable urgent military measures to be taken by the Organization there should be held immediately available by the members of the Organization national air force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action should be determined by the

Security Council with the assistance of the Military Staff Committee within the limits laid down in the special agreement or agreements referred to in paragraph 5 above.

- 7. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security should be taken by all the members of the Organization in coöperation or by some of them as the Security Council may determine. This undertaking should be carried out by the members of the Organization by their own action and through action of the appropriate specialized organizations and agencies of which they are members.
- 8. Plans for the application of armed force should be made by the Security Council with the assistance of the Military Staff Committee referred to in paragraph 9 below.
- 9. There should be established a Military Staff Committee the functions of which should be to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, to the employment and command of forces placed at its disposal, to the regulation of armaments, and to possible disarmament. It should be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. The Committee should be composed of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any member of the Organization not permanently represented on the Committee should be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires that such a state should participate in its work. Questions of command of forces should be worked out subsequently.
- 10. The members of the Organization should join in affording mutual assistance in carrying out the measures decided upon by the Security Council.
- 11. Any state, whether a member of the Organization or not, which finds itself confronted with special economic problems arising from the carrying out of measures which have been decided upon by the Security Council should have the right to consult the Security Council in regard to a solution of those problems.

Section C. Regional Arrangements

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1. Nothing in the Charter should preclude the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and their activities are consistent with the purposes and principles of the Organization. The Security Council should encourage settlement of local disputes through such regional arrangements or by such regional agencies, either on the initiative of the states concerned or by reference from the Security Council.

- 2. The Security Council should, where appropriate, utilize such arrangements or agencies for enforcement action under its authority, but no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council.
- 3. The Security Council should at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX. ARRANGEMENTS FOR INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION

Section A. Purpose and Relationships

- 1. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms. Responsibility for the discharge of this function should be vested in the General Assembly and, under the authority of the General Assembly, in an Economic and Social Council.
- 2. The various specialized economic, social and other organizations and agencies would have responsibilities in their respective fields as defined in their statutes. Each such organization or agency should be brought into relationship with the Organization on terms to be determined by agreement between the Economic and Social Council and the appropriate authorities of the specialized organization or agency, subject to approval by the General Assembly.

Section B. Composition and Voting

The Economic and Social Council should consist of representatives of eighteen members of the Organization. The states to be represented for this purpose should be elected by the General Assembly for terms of three years. Each such state should have one representative, who should have one vote. Decisions of the Economic and Social Council should be taken by simple majority vote of those present and voting.

Section C. Functions and Powers of the Economic and Social Council

- .1. The Economic and Social Council should be empowered:
 - a. to carry out, within the scope of its functions, recommendations of the General Assembly:
 - b. to make recommendations, on its own initiative, with respect to international economic, social and other humanitarian matters;
 - c. to receive and consider reports from the economic, social and other organizations or agencies brought into relationship with the Organization, and to coordinate their activities through consultations with, and recommendations to, such organizations or agencies;

- d. to examine the administrative budgets of such specialized organizations or agencies with a view to making recommendations to the organizations or agencies concerned;
- e. to enable the Secretary-General to provide information to the Security Council;
- f. to assist the Security Council upon its request; and
- g. to perform such other functions within the general scope of its competence as may be assigned to it by the General Assembly.

Section D. Organization and Procedure

- 1. The Economic and Social Council should set up an economic commission, a social commission, and such other commissions as may be required. These commissions should consist of experts. There should be a permanent staff which should constitute a part of the Secretariat of the Organization.
- 2. The Economic and Social Council should make suitable arrangements for representatives of the specialized organizations or agencies to participate without vote in its deliberations and in those of the commissions established by it.
- 3. The Economic and Social Council should adopt its own rules of procedure and the method of selecting its President.

CHAPTER X. THE SECRETARIAT

- 1. There should be a Secretariat comprising a Secretary-General and such staff as may be required. The Secretary-General should be the chief administrative officer of the Organization. He should be elected by the General Assembly, on recommendation of the Security Council, for such term and under such conditions as are specified in the Charter.
- 2. The Secretary-General should act in that capacity in all meetings of the General Assembly, of the Security Council, and of the Economic and Social Council and should make an annual report to the General Assembly on the work of the Organization.
- 3. The Secretary-General should have the right to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security.

CHAPTER XI. AMENDMENTS

Amendments should come into force for all members of the Organization, when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the members of the Organization having permanent membership on the Security Council and by a majority of the other members of the Organization.

CHAPTER XII. TRANSITIONAL ARRANGEMENTS

1. Pending the coming into force of the special agreement or agreements

referred to in Chapter VIII, Section B, paragraph 5, and in accordance with the provisions of paragraph 5 of the Four-Nation Declaration, signed at Moscow, October 30, 1943, the states parties to that Declaration should consult with one another and as occasion arises with other members of the Organization with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

2. No provision of the Charter should preclude action taken or authorized in relation to enemy states as a result of the present war by the Governments having responsibility for such action.

Note

In addition to the question of voting procedure in the Security Council referred to in Chapter VI, several other questions are still under consideration.

INTER-AMERICAN JURIDICAL COMMITTEE

REPORT ON THE DUMBARTON OAKS PROPOSALS SUBMITTED TO THE PAN-AMERICAN UNION FOR DISTRIBUTION TO THE AMERICAN GOVERNMENTS

December 8, 1944

The Inter-American Juridical Committee, having before it the Proposals for the establishment of a general international organization submitted by the conference held at Dumbarton Oaks, and acting in pursuance of the authority conferred upon the Committee by Resolution XXV of the Meeting of Foreign Ministers held at Rio de Janeiro, which entrusted the Committee with the formulation of specific recommendations relative to international organization in the juridical and political fields and in the field of international security, begs to submit to the American Governments the following observations and recommendations looking to the possible improvement of the provisions of the Charter of the international organization to be established in accordance with the Proposals.

The Committee has endeavored to keep strictly within the framework of the Proposals, in order that its suggestions may facilitate the formulation of a definitive agreement. The Committee realizes that a number of the provisions of the Proposals may have been deliberately drawn up in general terms, so as to invite comments of a constructive character. Its suggestions, therefore, take into account the latitude offered for alternative proposals within the general scheme.

CHAPTER I

PURPOSES OF THE ORGANIZATION

The four purposes set forth in the Proposals must meet with the immediate commendation of all of the American Governments. They are purposes which have many times been proclaimed as governing the relations of the American States within their own regional inter-American system. The Juridical Committee suggests, however, that it would be desirable to add an explicit reference to the promotion of justice in international relations as a condition of the maintenance of peace and security. In view of the fact that international security has in the past frequently been interpreted as consisting in the maintenance of the status quo, it is desirable to make it clear that the new international Organization will take a broader view of the maintenance of peace and security, so as to include within that objective the adjustment of conditions that might lead to acts of violence and thus contribute to the removal of the causes of war.

The concept of "justice" is, indeed, not a simple one. It involves the recognition of certain moral principles which transcend the strict legal rights

of states and constitute the ideal standard to which the law should ultimately attain. In its Preliminary Recommendation on Post-War Problems the Juridical Committee has already called the attention of the American Governments to the dangers inherent in the extreme nationalism that was so marked a characteristic of international relations during the years preceding Unless this spirit of national selfishness can be brought unthe present war. der the control of the moral law, which transcends national boundaries and makes the welfare of one country the concern of another, there is grave danger that the rivalries of states will get beyond the control of any form of international organization. No doubt this objective of the promotion of justice is to be implied from the purpose set forth in the Proposals of cooperating in the solution of international economic, social and other humanitarian problems; but in view of the disastrous effects of the false theories of nationalism which have prevailed so widely of recent years, there would seem to be distinct advantages in a formal pronouncement in respect to justice as an objective of the new international Organization.

CHAPTER II

PRINCIPLES

The Organization is to be based upon the principle of the sovereign equality of all peace-loving states. The phrase "sovereign equality" would appear to call for clarification. The Juridical Committee, in its Preliminary Recommendation on Post-War Problems, has emphasized that the sovereignty of the state must be understood in a manner consistent with the supreme necessity of maintaining peace, order and justice in the international community. It is fundamental, said the Juridical Committee, that no nation should claim as an attribute of sovereignty the right to be the judge in its own case or the right to take the law into its own hands. The Proposals call upon states to make these concessions of sovereignty; and it is therefore to be assumed that the adjective "sovereign" is used in this limited sense.

The principle of the equality of states is one which has been insistently maintained by the American States as one of the fundamental principles of their inter-American system. The principle of legal equality calls for the recognition of the national character and personality of the separate states. In respect to the fundamental rights associated with the existence of the state and with the exercise of jurisdiction over its territory all states stand upon a footing of equality; and this equality must be maintained as an essential condition of the separate legal personality and corporate character of the members of the international community. On the other hand the relative political importance of their respective rôles in international affairs has always been recognized, and it has frequently been reduced to specific terms, as in the case of contributions by quotas to the maintenance of international institutions and agencies.

It would appear that the term "sovereign equality", as used in the Proposals, was intended to make it clear that the new international organization was not to be a super-state which would destroy the legal personality of its individual members. Many features of the new organization mark a departure from the existing rules of international law, notably the provisions for a vote in the General Assembly by a majority of two-thirds. These provisions might, under certain circumstances, suggest the possibility of encroachment upon the reserved sphere of rights essential to the maintenance of the legal personality of the states. The use of the term "sovereign equality" in the Proposals is apparently intended as a guarantee that this will not be the case.

The second of the Principles set forth in Chapter II is the undertaking of the members to fulfill the obligations assumed by them in accordance with The Juridical Committee deems it advisable to supplement this undertaking in respect to the specific obligations of the Charter by a reaffirmation of the general principle of the good faith of treaties. have been the violations, during recent years, of the most solemn international engagements, both in the form of multipartite conventions and in the form of bipartite agreements, that it is necessary to proclaim in the clearest manner the oldest and most fundamental rule of international law: pacta sunt servanda. In its Reaffirmation of the Fundamental Principles of International Law, which the Juridical Committee submitted to the American Governments in revised form on March 6, 1944, Article IV declared: "Good faith, which is a fundamental principle of international law, should govern the relations of states. Mutual trust in the pledged word is an essential condition of the peaceful cooperation of states. Treaty obligations, freely and voluntarily entered into, must be faithfully observed." Time-worn as is the principle, its importance at the present day is such as to warrant its inclusion in the Principles of the new Charter.

By No. 3 of the Principles the members of the Organization become obligated to settle their disputes by peaceful means; and by No. 4 of the Principles they are called upon to refrain from the use of force in any manner inconsistent with the purposes of the Organization, which would include the These are obviously esuse of force as an instrument of national policy. sential conditions of law and order in the community of nations, many times reaffirmed in inter-American declarations. But the assertion of the two principles raises the question whether it would not be desirable at this point to make clear that provisions for the peaceful settlement of disputes and for the renunciation of the use of force can only be made practically effective if they are accompanied by a recognition of the need of making changes in the law to meet the changing conditions of international life. International law must be dynamic in character if it is to be an adequate basis It must represent the sense of justice of the international community; and it is to be expected that the standard of justice will develop in

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accordance with the new needs of the international community. In its Preliminary Recommendation on Post-War Problems the Juridical Committee, after studying the factors which contributed to the breakdown of law and order, came to the conclusion, among others, that "Existing rules of positive law must not be regarded as fixing permanently the status quo, but rather as the necessary basis of international order and stability pending the adoption of rules more in accord with the new needs of the international community."

In this connection it should be observed that the Principles do not appear to give adequate recognition to the authority of the community of nations as a whole in relation to the individual members of the community. ical Committee believes that the time has come when it must be formally proclaimed that the community of nations has rights in its own name, that it is not the mere agent of sovereign and independent states, but possesses a corporate character of its own, by virtue of which it may take action to protect the peace of the community and make provision for the public wel-In its Preliminary Recommendation the Juridical Committee referred to the necessity of creating some machinery of international organization which could represent the will of the entire community and its collective interests rather than the will and the interests of its individual members, and which could carry into effect its decisions. While recognition of the authority of the international community is implicit in a number of the provisions of the Proposals, there would seem to be an advantage in making more definite reference to it.

In addition to the Principles set forth the Juridical Committee believes it desirable to add the obligation on the part of every state to keep open the channels of communication and information with other countries in order to promote mutual understanding. It has been pointed out upon numerous occasions of recent years that there is little hope of maintaining friendly relations among the nations unless it is possible for the people of one country to know the true attitude of other countries. In its Preliminary Recommendation on Post-War Problems, the Juridical Committee, discussing the extreme nationalism that manifested itself in certain countries before the war, pointed out that the theories from which the new nationalism drew its strength took deeper root than would have been possible a generation earlier, due to the fact that the governments holding those views were able to shut off "Rigorous censorship of the press," the sources of public information. said the Committee, "a governmental monopoly of radio broadcasting, the suppression of public meetings, and other forms of control made it impossible for public opinion in those countries to have access to sources of information which might have enabled it to form just judgments of the foreign policy pursued by the government." The effective administration of the principle of open channels of communication and information would, indeed, present difficulties; but it is believed that a considerable gain would

result if all of the members of the new Organization pledged themselves to the principle, although reserving to themselves the enforcement of it.

The principle of open channels of communication and information between state and state would be one element of those fundamental rights of the individual citizen which have come to be described collectively as a "bill of rights." In Chapter IX, A, 1, of the Proposals the new Organization is called upon to "facilitate solutions of economic, social and other humanitarian problems and promote respect for human rights and fundamental This indirect reference to the principle that the individual citizen has rights which should be the concern of the international community might well be strengthened by specifically affirming that principle among others set forth in Chapter II. The Atlantic Charter refers to freedom from fear and freedom from want as being among the "common principles" in the national policies of their respective countries upon which the signatory powers base their hopes for a better future for the world. message to Congress on January 7, 1941, President Roosevelt referred to the fundamental principles of freedom of speech and of expression and freedom of religious worship, affirming at the same time the necessity that men should live free from fear and free from want. It would seem desirable to include in the charter of the new international Organization an international bill of rights containing the rights that are fundamental for the protection of the individual citizen. An international bill of rights might, if sufficiently comprehensive, preclude the necessity of making provision for the protection of minorities in countries where there are large minority groups that have long possessed a separate national character.

CHAPTER III MEMBERSHIP

Membership of the Organization is to be open to all "peace-loving states". The term "peace-loving" appears to be somewhat ambiguous, and the Juridical Committee is of the opinion that it would be better to make the membership of the Organization open to all states that are prepared to accept the obligations of the Charter. The designation, "law-abiding states," is suggested as more appropriate. As a practical matter all states would find it necessary and desirable to become members of the new Organization, not only because of the protection given to them by the security provisions of the Charter and the other advantages attaching to membership, but because of the isolated position of a state outside the Organization. its Preliminary Recommendation the Juridical Committee set forth the conclusion that the international community must be organized on the basis of the coöperation of all nations, and that no nation was privileged to remain aloof from the organization thus established. The new Organization should have the same membership as the community of nations, or rather, it should be the community of nations itself, more closely united by virtue of the affirmation of new principles of collective responsibility and possessing more effective agencies of cooperation for the attainment of its common ends. Universality of membership need not, however, prevent the assignment to recent enemy states of a special temporary status until such time as the other members of the Organization believe that those states are prepared to fulfill their obligations under the Charter. (See Chapter XII.) A special problem would be presented in the case of Liechtenstein, Monaco and San Marino, whose diminutive size might make their full participation in the activities of the Organization somewhat embarrassing. But it would be no more difficult to make special provision for these states than it would be to create a special status for them outside the Organization.

CHAPTER IV PRINCIPAL ORGANS No comment called for.

CHAPTER V

THE GENERAL ASSEMBLY

- A. Composition. Under the provisions relating to the composition of the General Assembly it is assumed that the phrase "number of representatives" refers to the number of delegates which may be accredited by a particular state to the General Assembly, and that these representatives are collectively to cast but one vote.
- B. Principal functions and powers. Under the provisions relative to functions and powers (No. 1) the General Assembly is authorized to make recommendations with respect to the general principles of cooperation in the maintenance of international peace and security, and with respect to any questions relating to the maintenance of peace and security which may be brought before it by any member of the Organization or by the Security The provisions require clarification. It would appear that the competence of the General Assembly in this field is to be exercised in such a way as not to impede the action of the Security Council, which is made primarily responsible for the maintenance of international peace and security. Hence the distinction is made between questions on which action is necessary and those which do not require action. The former are to be referred to the Security Council, either before or after discussion. No limitation is placed, therefore, upon mere discussion by the General Assembly of any question affecting the maintenance of peace. But if a particular matter is being dealt with by the Security Council, the General Assembly should not upon its own initiative make a recommendation on the matter. ical Committee interprets this provision to mean that the initiative in such cases would have to come from the Security Council, otherwise the purpose of the limitation imposed for the protection of the Security Council would be defeated.

Nothing is said to indicate to whom the recommendations of the General Assembly are to be made. It might be inferred that a recommendation in respect to a question on which action is necessary should be made to the Security Council. But this is not specified. There is merely the negative provision that a recommendation is not to be made if the matter is being dealt with by the Security Council. In respect to other recommendations, that is to say, those on which no action is necessary, the Juridical Committee assumes that they would be made to the governments, or possibly to the particular parties to a dispute; and that they would be no more than expressions of opinion by the General Assembly as to the policy that it would be desirable to follow under the circumstances. In as much as the provisions of No. 1 refer to recommendations with regard to "the general principles of coöperation in the maintenance of peace and security," the Juridical Committee interprets this phrase as meaning more than mere recommendations in regard to specific disputes, and it assumes that they would be included under the recommendations authorized in respect to political matters under the terms of No. 6.

As has been observed above, the provisions of No. 1 prohibit the General Assembly from making a recommendation upon any matter relating to the maintenance of peace and security which is being dealt with by the Security Council. The prohibition would seem to be necessary in respect to a recommendation directed to the individual governments, in order to avoid a conflict with the decision of the Security Council. But there does not appear to be any reason why a recommendation might not be made by the General Assembly to the Security Council, as a means of expressing the public opinion of the whole body of states upon the question at issue. The Security Council would remain free to act, in accordance with its judgment of the merits of the recommendation.

The General Assembly is given power (No. 2) to admit new members to the Organization, upon recommendation of the Security Council. This would appear to limit the power of the General Assembly to mere approval of decisions taken by the Security Council. The Juridical Committee suggests that the General Assembly should be able to take the initiative in respect to the admission of new members, leaving it to the Security Council to propose such special provisions with respect to former enemy states as it may find to be necessary. In the case of political entities not previously existing as states, their recognition as new states should be made by the collective action of the General Assembly, and it should be automatically accompanied by their admission to membership in the Organization.

The General Assembly is given power (No. 3) to suspend and to expel members from the Organization. The Juridical Committee believes that the provisions with respect to expulsion are not desirable. In its Preliminary Recommendation on Post-War Problems the Committee insisted that the international organization should include all nations within its membership.

(See above, Chapter III.) Provision should, no doubt, be made for the possibility of a state violating its obligations. But in such case the particular state should be disciplined, not expelled. Expulsion would only tend to create factions in the international community. In this connection it should be observed that the Proposals wisely omit any provision for withdrawal of a member from the organization upon its own initiative. The experience of the League of Nations suggests that it is not proper to allow a state to decide whether or not it will coöperate in the maintenance of the essential conditions of law and order in the community.

The General Assembly has the function (No. 4) of electing the non-permanent members of the Security Council. No distinction as to relative eligibility is made by the Proposals between the larger and the smaller states. All would be equally eligible as non-permanent members.

In view of the fact that under the existing provisions of the Proposals the Security Council would not be in existence until the General Assembly met and elected the non-permanent members, it would seem desirable to name in the Charter the provisional non-permanent members of the Security Council, pending elections by the General Assembly in accordance with the Charter.

(For comment upon the Secretariat, see Chapter X.)

The General Assembly is given (No. 6) power to make "recommendations" for the purpose of promoting international cooperation in political, economic and social fields and of adjusting situations likely to impair the general wel-This is a broad competence, and in view of the different interpretations that might be put upon it, it requires clarification. In the first place it is not clear to whom the General Assembly is to make its recommendations. (See the discussion of this same point in respect to the recommendations which the General Assembly is authorized to make under No. 1.) alternatives in this case would appear to be that the recommendation should be made either to the Security Council or to the governments direct. provision is made, however, in Chapter VI, B, dealing with the powers of the Security Council, for action by the Security Council upon recommendations of the General Assembly in the fields of political, economic and social co-Hence it is to be inferred that the recommendations of the operation. General Assembly in these fields are not to be made to the Security Council, for want of power by that body to act upon them.

The alternative is that recommendations of the General Assembly are to be made to the governments direct. But this interpretation, if applied to all recommendations, would reduce the General Assembly to a purely consultative body, subject at all times to the necessity of submitting its views to the individual states for their separate approval. This is scarcely compatible with the position assigned to the General Assembly as one of the principal organs of the Organization. At the same time it would seem to be in conflict with the terms of Chapter IX, A, which vest responsibility for promoting international coöperation in economic and social matters in the

General Assembly, thus implying that the General Assembly is more than a mere consultative body.

It would seem desirable, therefore, that a clause be added to No. 6 clarifying the nature of the recommendations which the General Assembly is empowered to make under that head. If the recommendations of the General Assembly are in any case to have the force of "resolutions," taking effect immediately upon their adoption, specific provision should be made to that end.

What should be the character of the recommendations or resolutions which the General Assembly might be authorized to make without the necessity of reference to the individual governments for their separate ratification? The subject is a difficult one, in view of the fact that the General Assembly is authorized to act by a two-thirds majority, which would have the effect of binding the other states to put the recommendation into effect. The Juridical Committee would propose that a distinction be made between recommendations providing for international cooperation in matters of general interest and recommendations changing the rules of international law. "International cooperation," as distinct from the regulation of conflicting interests, appears to be the specific objective of No. 6, and it would seem desirable that the General Assembly should be able to take decisions at least in the field of economic and social cooperation, without the necessity of submitting the proposed measures for ratification. The fact that the General Assembly is required to make "important decisions" by a two-thirds vote would suggest the possibility of decisions that are more than mere recommendations, as well as the further fact that recommendations facilitating solutions of economic and social problems, provided for in Chapter IX, are to be carried out by the Economic and Social Council. The Juridical Committee would recommend, therefore, that the terms of No. 6 be clarified so as to permit the adoption of recommendations of this kind without the necessity of referring them to the governments for approval.

In contrast to the recommendations above referred to, providing for international cooperation in matters of general interest, would be recommendations having as their principal purpose a change in the rules of international law. Action by the General Assembly in this field does not appear to be contemplated by the provisions of No. 6; but in view of the broad phrasing of the provisions of this number, the Juridical Committee believes it necessary to emphasize that if the power of the General Assembly to make recommendations is intended to include resolutions, taking effect of themselves, such resolutions could not go so far as to have the effect of changing the rules of international law in the sense of modifying the established rights and duties of states. The General Assembly might properly make recommendations in this field, acting in this respect in the role of an international conference for the codification of international law. But all such recommendations should be referred to the separate states for ratification in accordance

with their constitutional procedures. This was doubtless the intention of the Proposals, since it is not to be believed that so important a matter would have been left to be decided in the opposite sense by mere inference from the broad competence assigned to the General Assembly under No. 6.

Who is to make the distinction between recommendations providing for cooperation in matters of common interest and recommendations changing the established rules of international law? The line might be at times difficult to draw, since measures of cooperation would in most cases involve the assumption of new obligations in respect to the matter which is the object of cooperation. The Juridical Committee would recommend that the General Assembly be permitted to make the distinction, subject to a rule laid down for it to that effect in the Charter.

The necessity of ratification by the separate states of recommendations of the General Assembly proposing changes in the established rules of international law makes it desirable that a provision should be adopted in accordance with which these recommendations would come into effect when ratified by The Juridical Commita fixed number of the members of the Organization. tee would recommend that the General Assembly determine, at the time of the adoption of the recommendation, the number of ratifications necessary to bring the new rule of law into effect for the particular states ratifying it. The proposed rule might be in the form of a resolution attached to the recommendation or in the form of a general convention. The position of states not ratifying the resolution or convention would be temporarily anomalous, as has been the case in the past when general conventions have been ratified only by a limited number of states. It is to be expected, however, that the new rule of law, assuming it to be in accordance with the principles of the Organization, would in due time come to be accepted as the expression of the will of the international community. While the procedure above proposed falls short of the desire of many jurists for a more effective method of codifying and developing international law, the Juridical Committee does not believe that states are as yet ready to modify their constitutional procedures so as to permit the adoption of legal obligations by vote of an assembly of plenipotentiary representatives.

While the Juridical Committee is aware of the circumstances which made it appear necessary to entrust the Security Council with primary responsibility for the maintenance of peace and security, thus constituting it beyond the direct control of the General Assembly in which all states are represented, nevertheless the Committee believes it desirable to express the hope that in due time, when the dangers still existing after the war are past and when the international community has developed a greater sense of moral unity, it may be found possible to make the General Assembly the center of responsibility in the international organization. Under such a system the Security Council would be converted into an Executive Committee of the General Assembly, empowered to take action in cases of emergency, but otherwise acting in response to the declared will of the General Assembly.

C. Voting. The provisions for voting in the General Assembly appear to be an attempt to reconcile the principle of the equality of states with the practical necessity of enabling the General Assembly to take effective action. The assignment of one vote to each state, irrespective of size, is a formal acknowledgment of the principle of the "sovereign equality" of states set forth in Chapter II of the Proposals. Distinguished jurists have from time to time proposed a weighting of votes of the members of an international organization, so as to give to each state a voting power commensurate with its actual interest in the decisions to be taken and with the responsibility which it is able to assume for the maintenance of law and order. But it would seem that the time is not opportune for making such distinctions, and that the attempt to do so would only result in creating invidious discriminations that might give rise to unfriendly relations.

On the other hand the provisions of Section C, No. 2, enable the General Assembly to adopt recommendations by a majority vote, which, in the case of important decisions enumerated in the paragraph, must be a majority of two-thirds. These provisions are significant, in that they mark a departure from the rule of absolute unanimity which prevailed, except in specified cases, in the decisions of the Assembly of the League of Nations. practical importance, however, depends in part upon the interpretation to be given to the terms of Section B, No. 6. (See above, p. 64.) If the recommendations of the General Assembly are to extend to matters of cooperation which would involve practical commitments in the wide field assigned to cooperation under No. 6, the departure from the rule of unanimity represents an important advance in the efficient administration of the many forms of common interest which it is to be expected that the new Organization will The General Assembly is given power, by majority desire to regulate. vote, to determine any "additional categories" of questions to be decided by two-thirds vote; and it is to be expected that these additional categories will extend into the political, economic and social fields referred to in Section B. As has been observed above, the power of the General Assembly could not in any case extend to final action with respect to changes in the established rules of international law.

D. Procedure. Section D makes no provision for a permanent seat of the Organization; but this is provided for in Chapter VI, D, 1. The General Assembly would normally hold its meetings at the permanent seat of the Organization, but there is no reason why it should not on occasion meet at some other place that might be agreed upon.

CHAPTER VI

THE SECURITY COUNCIL

A. Composition. The provision for a Security Council of eleven members appears to be a fair compromise between the need of a body small enough to take prompt action and large enough to permit an adequate representation

of the states which do not have permanent seats. The majority assigned to the non-permanent members seems intended to give assurance against any attempt on the part of the permanent members to dominate the international community. The provision for two-year terms, in contrast with the three-year terms of the non-permanent members of the Council of the League of Nations, offers the advantage of a more frequent representation of the states not entitled to permanent representation. Commendable also is the provision for the retirement of three members each year, making it possible for the Security Council to reflect more adequately the opinion of the General Assembly.

B. Principal functions and powers. The Security Council is given "primary responsibility" for the maintenance of international peace and security, acting on behalf of the other members of the Organization in the fulfillment of the duties thus entrusted to it. It would appear that this important function is entrusted exclusively to the Security Council in order to insure that prompt action may be taken to meet threats to the peace and possible acts of aggression. This grant of power to the Sécurity Council to act on behalf of the other members of the Organization represents an important delegation of power, one which might seem at first sight to be contrary to the "sovereign equality" of states, proclaimed as the first of the principles by which the new Organization is to be governed. The Juridical Committee is of the opinion, however, that in as much as this power of the Security Council relates to the enforcement of existing law when threatened by acts of aggression, and not to the creation of new law, the delegation of power to the Security Council to maintain peace and security is fully justified by the circumstances at present confronting the nations. Taken in connection with the obligation of the Security Council to act in accordance with the purposes and principles of the Organization, there would seem to be no encroachment upon the sovereignty or equality of states in the sense in which these principles have come to be understood in recent years. The checks upon the power delegated seem to be adequate to prevent a possible abuse of it.

On the other hand, while it appears to be a necessity of the present world situation that the General Assembly should delegate to the Security Council to take measures to maintain peace and security against acts of aggression and threats of aggression, there is no reason why the Security Council could not exercise this exclusive power in informal cooperation with the General Assembly. A provision requiring that the members of the Security Council should, upon request of a majority of the General Assembly, appear before that body when it is in session and give it information in respect to the nature of existing threats to the peace and the measures which the Security Council has taken or contemplates taking, would not impede in any way the freedom of the Security Council to take prompt action in the presence of an emergency. This provision, supplementing that of Chapter V, B, 8, which provides for consideration by the General Assembly of reports from the Security

Council, would give to the members of the General Assembly a greater sense of their own responsibility in respect to their obligation to accept and carry out the decisions of the Security Council, in accordance with the provisions of Section B, No. 4, of this chapter.

An important question is presented by the terms of Nos. 2 and 4 of the Functions and Powers of the Security Council. It is possible that the question was deliberately left undecided by the conference at Dumbarton Oaks. in view of the difficulty of coming to a decision at the present moment. No. 2 provides that the Security Council is to discharge its duties in accordance with the purposes and principles of the Organization. Does this mean that the enforcement of the terms of the coming peace treaties, including the boundaries to be established between the present members of the United Nations, is to be regarded as within the power assigned to the Security Council to maintain international peace and security? No. 4 provides that the members of the Organization obligate themselves to carry out the decisions of the Security Council in accordance with the provisions of the Charter. Does this mean that the members of the Organization must assist in the enforcement of the terms of the peace treaties? If it is the intention of the Proposals that the members of the Organization are to assume this obligation, it would seem desirable to specify the obligation more clearly, and at the same time to relate the obligation to the principle that the Organization has the power to make changes in the status quo when called for by the objective of promoting justice in international relations. If at times in the practical relations of states it becomes necessary to choose the lesser of two evils, the principle of justice can only be saved by reserving to the international community the right to readjust such situations when a more con-Otherwise the community as a whole becomes a party venient time arises. to the original wrong done.

C. Voting. The question of voting procedure is left to be settled by later In view, however, of official statements indicating certain of the issues in dispute between the delegations at Dumbarton Oaks, the Juridical Committee believes it desirable to recommend in the strongest terms possible that a state involved in a controversy should not vote in its own case. To grant such a right would be to establish a principle of the most reactionary character, since it would discriminate in favor of the states enjoying the right and would put other states not members of the Security Council in a position of inferiority. Equality before the law must be rigorously preserved, whatever concessions of political inequality it may be necessary to make. The Covenant of the League of Nations specifically excepted the parties to a dispute from the unanimous agreement contemplated in reports relative to the settlement of disputes. The precedent should be followed here.

It would seem desirable, but not essential, that decisions of the Security Council should be taken by a two-thirds vote, which would mean eight of the present eleven members. But in such case the majority should always include the votes of the permanent members, upon whom would fall the chief burden of enforcing the decisions of the Security Council.

CHAPTER VII

AN INTERNATIONAL COURT OF JUSTICE

Provision is made under No. 1 for "an international court of justice," which should constitute the principal judicial organ of the Organization. The Juridical Committee, in accordance with the conclusions reached in its Preliminary Recommendation, would suggest that the existing Permanent Court of International Justice should be named as the Court. The Protocol to which the Statute of the Permanent Court of International Justice is attached is an independent treaty, and it could without difficulty be incorporated in the Charter of the new Organization, in accordance with the terms of A large number of treaties relate directly to the existing Court, and it is desirable that they should not be automatically annulled. was the intention of the framers of the Proposals that there should be a legal succession from the existing Court to the new court; but apart from the practical convenience of juridical continuity, it is only a proper recognition of merit that the existing Court, which has rendered such valuable service to the international community, should be named as the Court, with provision for such changes in its Statute as may be found necessary and proper, in accordance with the provisions of No. 3, (a).

Provision is made in No. 5 that states not members of the Organization may under certain conditions become parties to the statute of the court. This provision requires clarification. Membership in the Organization is to be open to all "peace-loving states." Is it contemplated that a peace-loving state which, for reasons of its own, might choose to remain outside the Organization, might nevertheless be permitted to become a party to the statute of the court? Or is the reference to former enemy states, which the Security Council might not be willing to admit to membership in the Organization, yet might be willing to permit to become parties to the statute of the court?

CHAPTER VIII

MAINTENANCE OF PEACE AND SECURITY

A. Pacific settlement of disputes. The provisions of Nos. 1-5 appear to be an improvement upon the corresponding procedures of the Covenant of the League of Nations for the settlement of disputes. They are apparently intended to cover all disputes in which there might be a conflict of rights between states. The parties to a dispute are first called upon to settle the dispute by means of their own choice; and only after the failure of such means does the Security Council take competence, in which case its competence

appears to be without exceptions or qualifications. The Security Council may decide whether the circumstances require it to deal with the dispute upon its own account; and, having come to that decision, it may then decide whether to recommend appropriate procedures or methods of adjustment. The Juridical Committee finds this last provision somewhat vague. It is not clear whether the Security Council itself may undertake to settle the dispute definitively or whether it may merely recommend an appropriate tribunal or commission. Nor is it clear what is to be the basis of the final decision. settlement reached by a rigid application of legal rules would clearly be inadequate. Otherwise the case should normally have been submitted to the international court of justice. The Juridical Committee assumes, therefore, that whether the Security Council undertakes to settle the dispute upon its own account or decides to refer the case to the international court or to a special tribunal or commission, the basis of the decision will be the generally accepted principles of justice represented by the standard ex aequo et bono.

By No. 6 it is provided that justiciable disputes should "normally" be referred to the international court of justice. No provision is made, however, in the Proposals for the determination of the cases governed by the word "normally." The Juridical Committee, therefore, would suggest that the word "normally" be omitted from the text of No. 6; otherwise the court might be deprived of its proper function of passing upon its jurisdiction.

No provision is made with respect to the decision whether a particular dispute is or is not justiciable. No doubt the conference at Dumbarton Oaks left this matter to be settled in the statute of the court. But it would seem desirable that if mention is to be made in the Charter of the jurisdiction of the court, a clause should be added referring to the statute of the court for the determination of the jurisdiction of the Court. If by "justiciable disputes" are meant disputes in which states are in conflict as to their respective legal rights and which are therefore by their nature susceptible of decision by the application of the principles of law, then the court should be competent to decide what disputes are to be included in that category. Generally speaking, all disputes which the parties cannot settle between themselves should be submitted to the court. If the court refuses jurisdiction, on the ground that the dispute is not a justiciable one, then the dispute should go to the Security Council with final authority.

By No. 7 provision is made that matters which by international law are solely within the domestic jurisdiction of the state concerned are excepted from the competence of the Security Council under the terms of Nos. 1–5. This paragraph also needs clarification. Who is to decide what questions are "within the domestic jurisdiction of the state"? The question would seem to be properly one for the court to decide. The terms of No. 7 are somewhat misleading, in that they give-the impression that neither the Security Council nor the court would have competence in the matter. Doubtless the intention of the Proposals is to assure that states will be pro-

tected in the exercise of their domestic jurisdiction from any interference by the agencies of the new Organization. But the decision whether in a particular case the matter is or is not within the domestic jurisdiction of the state must obviously be left to the court as the judicial agent of the Organization. Otherwise the door would be open to evasions of the obligation of pacific settlement.

B. Determination of threats to the peace or acts of aggression and action with The provisions of this section give a broad competence to the Security Council which is in keeping with the primary responsibility imposed upon it for the maintenance of peace and security. (See Chapter VI, B, 1.) In general they give to the Security Council the power to determine what conditions or situations shall constitute a threat to the peace or a breach of the peace, and what measures should be taken to maintain or re-On the whole they appear to be sufficiently comprehensive to enable the Security Council to fulfill its functions. Comment by the Juridical Committee upon the provisions for military action seems to be uncalled In respect, however, to the general competence of the Security Council to determine threats to the peace, it is assumed by the Juridical Committee that the provisions of No. 2 are to be taken in connection with the provisions of Section C of the same chapter, dealing with regional arrangements. accordance with this understanding there would be nothing to prevent the American States from holding a consultative meeting to determine which of two American States might be responsible for failure to live up to the terms of inter-American peace agreements, in accordance with Article XXVI of the Alternative Treaty relating to Peaceful Procedures, submitted to the American Governments by the Juridical Committee on March 6, 1944. the ultimate responsibility would always rest with the Security Council, and it would be for the Security Council to determine whether, in spite of the regional efforts to protect the peace, conditions existed requiring it to take over the dispute under its higher competence.

By No. 3 the Security Council is given power to determine what measures not involving the use of armed force should be employed to give effect to its decisions. The Juridical Committee raises the question whether it would not be possible to leave it to the General Assembly to decide upon these measures, inasmuch as the application of them would probably involve the great majority of the members of the Organization. It is assumed that in general the situation would not be of an emergency character; and provision could be made that, if in the view of the Security Council a particular situation should come to present an emergency character, the Security Council would have the power to take immediate action.

C. Regional arrangements. The provisions of this section recognize the possibility of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and

their activities are consistent with the purposes and principles of the Organ-In this connection the Juridical Committee would suggest that, inasmuch as the inter-American regional system is the only regional system thus far developed, it would be appropriate that the Charter of the new Organization should signalize that fact and should indicate the desirability of preserving the fundamental features of the inter-American system. Preliminary Recommendation on Post-War Problems, Conclusion No. VII, the Juridical Committee pointed out the necessity of so constituting the new international organization as to reconcile the principle of universality of membership with the existence of regional groups formed by natural bonds of solidarity and common interests. The inter-American system is not limited to a system of peaceful procedures for the settlement of disputes, but includes general principles of international law, the machinery of conferences and consultative meetings, a permanent central organ, numerous administrative committees and commissions, and other agencies of coöperation. these features of the inter-American system must be coordinated with those of the new Organization, so as to retain the acknowledged benefits of the regional system without impeding the larger functions and activities of the universal system.

No. 2 of Section C provides that no enforcement action should be undertaken by regional arrangements or by regional agencies without the authorization of the Security Council. The Juridical Committee understands that the phrase "no enforcement action" relates solely to measures of coercion against a state which refuses to submit a dispute to the peaceful procedures provided for in the Charter or is otherwise guilty of an act of aggression. So understood, the provision is entirely in harmony with the primary responsibility imposed upon the Security Council for the maintenance of peace. The provisions of No. 3 with respect to the duty of keeping the Security Council fully informed of activities undertaken or contemplated under regional arrangements or by regional agencies are understood to refer only to activities in connection with procedures of pacific settlement.

CHAPTER IX

ARRANGEMENTS FOR INTERNATIONAL ECONOMIC AND SOCIAL COÖPERATION

A. Purpose and relationships. The Proposals contemplate that the new Organization will facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms. Responsibility for the discharge of this function is to be vested in the General Assembly, and, under the authority of the General Assembly, in an Economic and Social Council.

In respect to the function of promoting solutions of international economic and social problems, it would appear that the provisions of Section A, 1, overlap those of Chapter V, B, 6, dealing with the competence of the Assem-

bly to make recommendations in the field of political, economic and social coöperation. The Juridical Committee interpreted the provisions of Chapter V, B, 6, as intending that the recommendations of the General Assembly were to be made to the governments direct. (See above, p. 64.) At the same time the Juridical Committee believed it desirable to propose that recommendations of the General Assembly in the field of economic and social coöperation might have the character of resolutions taking effect without the necessity of referring them to the governments for ratification. In coming to this conclusion the Juridical Committee found itself justified by the provisions of Chapter IX, which impose upon the General Assembly the responsibility for facilitating solutions of economic and social problems and which assign to the Economic and Social Council the power to carry out the recommendations of the General Assembly. Both of these provisions suggest that the recommendations of the General Assembly might be carried out without the necessity of first submitting them for ratification.

In discussing the possible scope of recommendations of this character in connection with the broad powers of the General Assembly under the terms of Chapter V. B. 6. the Juridical Committee called attention to the necessity of distinguishing between recommendations providing for international coöperation in matters of common interest and recommendations changing the rules of international law in the sense of modifying the established rights and duties of states. Recommendations in this latter field should be subject to ratification by the separate states before they can create obligations for the members of the Organization. It is suggested that it would be a safe provision to leave it to the General Assembly itself to determine, on the basis of the above distinction, whether the particular recommendation before it is one which requires ratification by the separate governments or is one which merely involves cooperation in matters of common interest not involving a conflict of rights, and which might therefore be put into effect without the necessity of ratification. It will doubtless never be possible to draw a logical line between the two classes of recommendations. But for practical purposes a line must be drawn; and it would seem best that the General Assembly should be the body to draw it.

In respect to the function which devolves upon the General Assembly to "promote respect for human rights and fundamental freedoms," the Juridical Committee understands that this function would extend to a recommendation proposing the adoption by the separate governments of an international "bill of rights" which would include freedom of speech and expression, the right of public assembly, freedom of religious worship, and other rights associated with the protection of the life, liberty and property of the individual in accordance with due process of law. It would appear to be within the power of the General Assembly to make such a recommendation without the necessity of ratification by the separate governments, assuming that each government would be left to carry out the recommendation in accordance with the circumstances of its own domestic situation. The fact

that the international bill of rights would be put into execution by each separate state would not deprive it of all value. For it would be at all times a standard to which the public opinion of the members of the Organization could appeal. More than that does not appear to be practical at the present time.

By the terms of Section A, No. 2, the various specialized economic, social and other organizations and agencies, established in pursuance of separate treaties and conventions, are to continue to exercise responsibility as defined by their statutes, and they are to be brought into relationship with the general Organization on terms to be fixed by agreement between the particular specialized organization or agency and the Economic and Social Council. The provision appears to be an excellent one. On the one hand it respects the separate character of the various specialized organizations, and on the other hand it makes possible the closest cooperation between them and the Economic and Social Council. In its Preliminary Recommendation on Post-War Problems the Juridical Committee signalized the work of the International Labor Office and urged that it be continued to the fullest pos-The Committee again takes the opportunity of calling the attention of the governments to the fact that social justice and the improvement of the conditions of life for the individual citizen in the interest of the general welfare have a relation to the maintenance of peace and for that reason must play an essential part in any plans of international reconstruction. The vital economic and social problem of the present day is to secure a just social order in which the resources of the community are controlled to the extent necessary to provide a standard of living adequate for the self-development of the individual citizen and for the security of his family, without at the same time depriving him of his character as an independent member of the community and subordinating him to a bureaucracy beyond democratic As the Juridical Committee observed in its Preliminary Recommendation on Post-War Problems: "The realization of these objectives is primarily the task of each separate state; but only by parallel international action can they be adequately secured." The task is not that of a day or of a year; but it is one that must be begun now if peace is to be permanently maintained.

- B. Composition and voting. The name "Council," given to the Economic and Social Council, is somewhat misleading. In view of the superior position held by the Security Council, it might be assumed that the Economic and Social Council would have powers in its own name and be responsible for the economic and social matters coming within its competence. But in fact the responsibility in these matters rests with the General Assembly, and the Economic and Social Council is merely a subordinate body, more in the nature of a special commission of the General Assembly. In consequence, the Juridical Committee would suggest that the name of the Economic and Social Council be changed to Economic and Social Commission.
 - C. Functions and powers of the Economic and Social Council. By No. 1, a.

the Economic and Social Council is empowered to carry out, within the scope of its functions, recommendations of the General Assembly. The Juridical Committee has already pointed out the need of clarification in respect to the effect of the recommendations of the General Assembly, due to the conflict which exists between the provisions of Chapter V, B, 6, which appear to contemplate recommendations to be made to the governments, and the provisions of the present section which appear to contemplate recommendations to be put into effect without reference to the governments.

D. Organization and procedure. It would appear that the Economic and Social Council is to be the central policy-forming and administrative agency of the Organization, and that while the General Assembly is to be responsible for the proper exercise of the functions of the Economic and Social Council, the Council itself would be the body immediately in contact with the various activities in the fields of economic and social cooperation. Such special commissions as may be required are to be set up by the Economic and Social In this connection the Juridical Committee would raise the question whether some provision could not be adopted which would protect better the responsibility imposed upon the General Assembly for the proper execution by the Economic and Social Council of the functions entrusted to It is clear that there will be need of a number of subcommittees dealing with distinct and separate problems, the protection of dependent peoples, minorities, migration, distribution of raw materials, regulation of international trade, aerial and maritime transport, communications, international finance, public health, control of narcotics and others. The Juridical Committee assumes that it was the intention of the Proposals that these problems could be more efficiently handled if the administration of them were centered in the Economic and Social Council. But the only control which the General Assembly appears to have over the Council is that of electing its members every three years. It is suggested, therefore, that a provision should be added by which the members of the Economic and Social Council should be obliged to appear from time to time before the General Assembly and to submit to interrogation in respect to the fulfillment of the duties entrusted to them.

CHAPTER X

THE SECRETARIAT

The Juridical Committee, having before it the valuable experience of the Secretariat of the League of Nations, would suggest that a provision be added to Chapter X, No. 1, to the effect that the Secretary-General and the members of his staff should constitute an international civil service, independent of control by the states of which they are nationals. The members of the Secretariat of the League of Nations were expected to act, during their period of office, "in an international capacity," and they were not to be in

any way representatives of their respective countries. Since 1932 officials of the League of Nations have been required to make a formal declaration that they will act with the interests of the League alone in view, and that they will not seek or receive instructions from any government or authority external to the League. It would be desirable that a similar standard should be adopted in respect to the Secretariat of the new Organization.

CHAPTER XI

AMENDMENTS

The Juridical Committee interprets the provisions of this chapter as making it possible for the General Assembly to propose ("adopt") an amendment by a two-thirds majority which might not necessarily include the votes of the members of the Security Council. The proposed amendment would, however, come into effect only when ratified by all of the members of the Security Council, and by a majority of the others, not necessarily including in the latter the same members which originally proposed the amendment. The Proposals thus make it possible to amend the Charter by less than a unanimous vote. The provisions for the ratification of amendments to the Covenant of the League of Nations present certain differences in comparison with those of the present Proposals. In order to uphold the principle of unanimity the Covenant made provision that any member of the League which signified its dissent from the amendment would not be bound by it, but in such case the dissenting member would cease to be a member of the The Juridical Committee is of the opinion that the time has come to accept a modification of the strict rule of unanimity; but that the solution offered by the Covenant of the League of Nations is not a satisfactory one. Nor does the provision of the Proposals offer an acceptable solution. would seem preferable to make provision that amendments could be proposed by a two-thirds vote of the General Assembly, including the permanent members of the Security Council; and that they should come into effect at the end of one year, provided that within that time no formal objection has been made by as many as one-third of the members of the Organization. The provision that, instead of ratification by a two-thirds majority, onethird of the members should within a fixed period make formal objection to the proposed amendment would have the advantage of requiring positive action by a member opposed to the amendment rather than permitting the defeat of an amendment by mere failure of the ratifying authority to act The above procedure was followed by the Assembly of the League of Nations in 1935 in respect to the protocol amending the Statute of the Permanent Court of International Justice, and no objection was made by states which had delayed ratification over a period of three years.

The chapter on Amendments gives to the permanent members of the Security Council a final and absolute veto on all amendments. This is perhaps

a necessary concession to the five powers upon which will fall the chief responsibility for the maintenance of peace and security. But the Juridical Committee questions whether some limitation should not be put upon the privilege. The Proposals contemplate an Organization which is to be permanent, and there is no provision for the expiration and necessary renewal of the Charter after a fixed period. Hence it would seem desirable that the terms of Chapter XI should be modified so as to permit a revision of the Charter de novo every twenty years; or, as an alternative, the terms of Chapter VI should be modified so as to limit the terms of the permanent members to a period of ten, or perhaps twenty years, subject to renewal.

CHAPTER XII

TRANSITIONAL ARRANGEMENTS

It would seem that approval must necessarily be given to the special provisions of No. 1, which would enable the states parties to the Four-Nation Declaration, signed at Moscow on October 30, 1943, to consult with one another and with other members of the Organization with a view to joint action on behalf of the Organization pending the coming into force of the special agreements with respect to the contribution to be made by the members of the Organization to the armed forces necessary for the maintenance of peace and security.

The provisions of this Chapter which might be interpreted so as to exclude enemy states from the benefits and obligations of the Charter would appear to be necessary until the agreements referred to in Chapter VIII, B, 5 are concluded. The Juridical Committee thinks it advisable that an additional clause should be added in accordance with which, after the above agreements have been concluded, the eventual admission of the former enemy states into the Organization should be provided for, it being understood that their admission is to be compatible with the special measures that have been taken in regard to them.

SUPPLEMENTARY OBSERVATIONS

The Juridical Committee would suggest that in the formulation of the Charter of the United Nations, to which the Proposals are directed, a simpler classification of topics might be adopted, omitting the sections into which the chapters are divided and grouping connected paragraphs where possible.

In view of the announcement that several other questions, in addition to the question of voting procedure in the Security Council, are still under consideration by the four states whose delegates took part in the discussions at Dumbarton Oaks, the Juridical Committee refrains from commenting upon certain obvious omissions from the Proposals, such as provisions for the protection of backward countries, provisions for the protection of minorities, provision for the publicity of treaties and for their registration with the Secretariat, etc.

No mention is made in the Proposals of the priority to be given to the obligations of the Charter of the United Nations in relation to other international treaties and conventions, bilateral and multilateral. While it is to be assumed that all such treaties and conventions would be subordinated to the obligations of the Charter, it would seem desirable to make specific provision to that effect. The Juridical Committee would recommend, therefore, that Article 20 of the Covenant of the League of Nations, providing for the abrogation of obligations inconsistent with the terms of the Covenant, should be incorporated, mutatis mutandis, as one of the articles of the Charter. The Juridical Committee raises the question whether the alliances recently contracted and now being proposed are not ipso facto incompatible with the terms of the Charter.

In view of the necessity of anticipating controversies involving divergent interpretations of the provisions of the Charter contemplated by the Proposals, the Juridical Committee would suggest the following procedure: "Any question with respect to the interpretation of the provisions of the Charter contemplated by the Proposals should, in principle, be decided by the General Assembly. The interpretation agreed upon by the General Assembly should be submitted to the Security Council, and if agreed to by the Security Council, the interpretation should be considered as authoritative. In the event that the Security Council should fail to agree with interpretation of the General Assembly, the question should be submitted to the court of international justice for a definitive opinion."

No mention is made in the Proposals of the means by which, and the conditions under which, the transition is to be made from the obligations of the members of the existing League of Nations to the United Nations. The League as a corporate body will obviously come to an end; but it will be necessary to provide for a certain degree of continuity and legal succession between the two bodies.

Francisco Campos F. Nieto del Rio L. A. Podestá Costa A. Gómez Robledo

CHARLES G. FENWICK

Rio de Janeiro, December 8, 1944.

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THE NEED FOR AN INTERNATIONAL LEGISLATIVE DRAFTING BUREAU

By C. WILFRED JENKS

Legal Adviser of the International Labor Office

The next few years are likely to be of critical importance in the development of the technique of international legislation by means of multipartite agreements. The interruption of the normal rhythm of international legislative activity by the war, the need to revise a substantial proportion of the principal existing multipartite legislative instruments in the light of the new conditions precipitated by the war, and the wide range of problems not dealt with in such instruments hitherto which have now been thrust into the foreground, will combine to produce an intensification of international legislative activity comparable to that of the years immediately following the first world war. The first steps are already being taken by the formulation of plans for a wide range of new international organisations, and when the necessary constituent instruments have been framed the whole of the existing corpus of international legislation is likely to be progressively reconsidered over a period of years.

It is now also fully apparent that no supra-national legislative authority will be created, even on a regional basis, during any period which it would at present be profitable to consider. Except insofar as some of the powers to take action for the maintenance of peace and security to be vested in the Security Council of the proposed general international organisation may be legislative in their effect, the multipartite instrument will continue to be the only method of international legislation available to the world community. It will in any case remain the normal method of international legislative action concerning the economic and social problems of modern civilisation. Though some of the more important of these problems will, if present expectations are fulfilled, be dealt with to an increasing extent by administrative action organised or coördinated by the new international economic organisations now being created, the volume of international legislation dealing with such matters is likely to continue to grow rapidly.

It has therefore become a matter of urgent importance to appraise the extent to which the technique of international legislation by means of the multipartite instrument as practised hitherto has operated satisfactorily and to explore ways and means of evolving from this technique an international legislative process corresponding to modern requirements. A full discussion of the subject would require a substantial volume, and the scope of the present paper is therefore confined to an indication of some of the reasons for thinking that the establishment of an International Legislative Drafting

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Bureau would be a useful step in the right direction and an outline of some of the more technical functions which such a Bureau might discharge. Such a Bureau would be an international equivalent for the Parliamentary Counsel's Office in the United Kingdom ¹ and the legislative reference and drafting services which have been developed in the United States and might be appropriately described as the International Parliamentary Counsel's Office.

In order to see in its true perspective the possible rôle of such an Office, it is necessary to summarise briefly the relevant experience of the inter-war period.

It would be foolish to underestimate the importance of what was achieved by means of the multipartite instrument during the inter-war period, and any failure to grasp the significance of this achievement is the more inexcusable as Judge Manley O. Hudson's invaluable volumes, International Legislation, have made the legislative output of the period so conveniently accessi-It was perhaps in the fields of transport and of labor that the greatest progress was made. Postal communications, telecommunications, aerial and maritime navigation and road, rail, and river transport were all dealt with in considerable detail in instruments many of which are, or have at some time been, in force for large numbers of States. The International Labor Code, 1939, which is a systematic presentation of the Conventions and Recommendations adopted during the inter-war period by the International Labor Conference, constitutes a comprehensive code of general labor stand-No other field has been so fully tilled, but the general range of international legislative activity has been extremely wide and has included the unification of commercial law, customs formalities, international sanitary regulations, the protection of literary, artistic, and industrial property, the control of the production and marketing of various commodities, the control of the drug traffic, the suppression of the white slave traffic, international cooperation in the repression of crime, and a host of such subjects.

Any facile optimism regarding the international legislative achievement of the inter-war period has, however, been rendered nugatory by our transparent failure during that period to legislate effectively on an international basis regarding the most critical economic and social problems of the time. It was in the highly technical field of transport that the gaps were the least serious. The *International Labor Code*, though one of the conspicuous achievements of the period, fell far short of what was required. Many of the instruments regarding economic and financial matters negotiated during the period must be accounted as having been failures. These failures resulted in part from failures in economic and financial policy which were inevitably reflected in the substantive provisions included in instruments; they

¹ For explanation of this term see Sir Courtney Ilbert, Legislative Methods etc., cited below, p.174, note 4, at pp. 77-85. For a similar service in the United States see Frederic P. Lee, "The Office of the Legislative Counsel," in Columbia Law Review, Vol. XXIX, No. 4 (April, 1929), p. 379.

resulted in part from underlying political difficulties which no improvement in the technique of international legislation could have removed; but they were unquestionably accentuated by the weaknesses of the legislative technique through which an effort was being made to create a body of world law regulating economic and social problems.

For it is idle to conceal the fact that the multipartite instrument is a very imperfect substitute for the existence of an international legislative process of the same character as the legislative processes with which we are familiar in national life. As Sir Arnold McNair has pointed out,²

the term "international legislation" is a metaphor, and the use of metaphors in an exact sense is nearly always a source of danger. The essence of "legislation" is that it binds all persons subject to the jurisdiction of the body legislating whether they assent to it or not, whether their duly appointed representatives have assented to it or not. International legislation does not. It only binds parties who have duly signed the law-making treaty and, where necessary, as it usually is, have ratified it.

Enthusiasts for the international legislative process by means of the multipartite instrument may be inclined to take objection to Dr. McNair's words of caution, but as regards many law-making treaties of the inter-war period his words are an understatement rather than an overstatement of the weaknesses of the present system. The requirement of ratification results in many laboriously negotiated instruments never coming into force, or only coming into force after such delay and between a group of parties so arbitrary in composition that their value is greatly limited. It often happens that an instrument is brought into force only by allowing the parties to make reservations of so far-reaching a character that the instrument loses most of The fact that instruments are binding only upon the parties and rarely include special provisions intended to counter this limitation upon their effectiveness, by securing their indirect application in relation to third States or protecting the parties against the consequences of their non-application by third States, is doubly disastrous in its consequences in that it both accentuates the difficulty of bringing instruments into force and places quickly reached limits upon their effectiveness once they are in force for cer-The traditional conception of international instruments as tain parties. creating relations between States alone is a fertile source of difficulties; it emphasises the difficulties of participation in certain instruments for States in the national life of which the voluntary principle plays an important part and limits the extent to which the provisions of instruments enure directly to the benefit of the individuals in the interest of whom they are frequently There is often no provision for any organized international supervision over the application of the instrument, with the result that, such application being left entirely to the uncontrolled discretion of the parties, the

² 19 Iowa Law Review (1934), p. 178.

degree of application actually secured is frequently very unsatisfactory. is still by no means universal to include in important instruments provision for the reference to an international judicial body of disputes concerning their interpretation. Even when an instrument includes such a provision, the procedure for bringing matters relating to their interpretation before an international judicial body is almost invariably of such a character that few or no cases are brought, although there may be divergences of opinion of considerable importance as to the meaning of the instrument. The position as regards the termination and modification of instruments is in very many cases quite unsatisfactory. Where there is any provision for termination, that provision generally takes the form of a unilateral right of denunciation which the parties are entitled to exercise at their uncontrolled discretion, sometimes only after the expiry of a certain period, or more rarely at certain intervals, but in some cases at any time right from the outset. It is becoming increasingly common to include in instruments some provision for their revision or modification, but many of these provisions imply little if any qualification of the unanimity principle and they are often indications of a recognition that modification may some day be necessary, rather than anything more precise or effective.

Happily, these weaknesses are not so inherent in the technique of international legislation by means of the multipartite instrument as to make it impossible to eliminate them in large measure within the limits set by the nature of that technique. Many of them can be eliminated by the inclusion of appropriate provisions in instruments at the time when they are drafted. The tendency to include in instruments provisions designed to this end developed considerably during the inter-war period but never became either as strong or as systematic as might reasonably have been desired.

To substantiate this contention fully it would of course be necessary to write a volume; five striking illustrations, selected at random from among the many which might be given, will perhaps suffice to make clear the scope for improving the effectiveness of the technique of the multipartite instrument by the cumulative effect of a large number of minor refinements of treaty technique.

The practice of allowing reservations of a far-reaching character deprived many of the instruments of the inter-war period of much of their value, but there was a marked tendency, in the case of instruments negotiated under the auspices of the League of Nations, to endeavour to expedite their acceptance by the inclusion of provisions designed to facilitate the acceptance of reservations by relaxing the ordinary rule of international law that an instrument cannot validly be accepted subject to a reservation unless the reservation is accepted by all the parties to the instrument. This was sometimes done by

³ See David Hunter Miller, Reservations on Treaties, 1919; H. W. Malkin, "Reservations to Multilateral Treaties" in British Yearbook of International Law, Vol. VII (1926), pp. 141–162; Committee of Experts for the Progressive Codification of International Law, Report on

providing in an instrument for a right to make unilaterally reservations of specified types, or reservations regarding specified articles or matters, or even unlimited reservations; in other cases it was done by laying down in an instrument some procedure for the acceptance of reservations dispensing with the necessity of obtaining the consent of all the parties to a reservation formulated by any one of them. In only one case, however, was any serious attempt made to devise adequate safeguards against an easy-going acceptance of abusive reservations. The Protocol to the Convention for the Simplification of Customs Formalities of November 3, 1923, which empowered the Council of the League of Nations to decide upon the admissibility of certain reservations after consulting the technical body to be appointed by the Council under the Convention for the purpose of considering disputes concerning its application, contained the germ of an appropriate international technique for this purpose. The attribution of some such power to an appropriate international body should make it possible to discriminate between reservations the acceptance of which is reasonable and desirable and reservations which it is preferable to reject, either because ratification subject to them would present a balance of disadvantage or because it is hoped that the instrument will in due course be ratified without This promising device was, however, never copied in the following sixteen years of League experience. On the contrary a marked tendency developed to provide that reservations to which no party has taken objection within six months of being notified thereof should be regarded as accepted. Such a provision places a special onus on a State wishing to object to a reservation, and is liable to provoke reservations on a scale calculated to defeat the whole purpose of international legislative activity.

Effective mutual supervision over the application of multipartite instruments presupposes the methodical collection of full information regarding the measures taken by the parties to fulfil their obligations. In recognition of this a number of instruments contain provisions whereby the parties undertake to communicate either to the other parties or to some international body the texts of all laws or regulations by which effect is given to the provisions of the instrument. As examples may be mentioned the International Slavery Convention of September 25, 1926, the Convention relating to the Treatment of Prisoners of War of July 27, 1929, and the instruments adopted by the 1930 and 1931 Conferences for the unification of the law relating to bills of exchange, promissory notes, and cheques. Other instruments, such as the Convention concerning the Safety of Life at Sea of May 31, 1929 and the Load Line Convention of July 5, 1930, provide for the communication

the Admissibility of Reservations to General Conventions, in League of Nations Official Journal, 1927, p. 880; L. A. Podesta-Costa, Les reserves dans les traités internationaux, in Revue de droit international, Tome XXI (1938), pp. 1-52; William Sanders, "Reservations to Multilateral Treaties Made in the Act of Ratification or Adherence," in this JOURNAL, Vol. 33 (1939), pp. 488-499.

not only of the texts of laws and regulations but equally of all official reports regarding the application of the instrument which are not confidential in character. Unhappily, the majority of the instruments of the inter-war period do not contain even a provision requiring the parties to communicate the texts of the relevant laws and regulations. Such a provision is lacking in, for instance, the Conventions framed at the Brussels Conferences on International Maritime Law of 1924 and 1926, the Convention and Protocols regarding Certain Questions of Nationality Law of April 12, 1930, the Conventions framed at the European Conference on Road Traffic of 1931, the Sanitary Convention for Aerial Navigation of April 20, 1933, the Convention regarding the International Status of Refugees of October 28, 1933, and almost all the Conventions adopted at the International Conferences of American States, to mention but a few of innumerable possible examples.

The inclusion of a jurisdictional clause in international instruments is still The absence of such a clause from instruments of a far from universal. political or-at the other extreme-a highly technical character is perhaps not surprising, though even in such instruments it is frequently possible to provide that disputes in regard to their interpretation shall be settled by an appropriate political authority or technical organ. The absence of any jurisdictional clause from instruments which deal essentially with legal rights and duties, on the other hand, is particularly open to criticism, but is still common. The International Conventions regarding Industrial Property and Literary and Artistic Property, the instruments framed at the Brussels Conferences of 1924 and 1926 on the unification of maritime law, at the Geneva Conferences of 1930 and 1931 on the unification of laws concerning bills of exchange and cheques, and at the Geneva Conference of 1930 on the unification of European river law, and the Warsaw and Rome Conventions of October 12, 1929 and May 29, 1933, respectively, on certain questions of private air law, are merely a selection of illustrations of such instruments which still do not contain any jurisdictional clause. sence of such a clause from instruments the whole object of which is to secure the unification of some branch of law is, clearly, likely to result in the work of unification accomplished with so much difficulty being undone by divergent national interpretations of the agreed text.

The denunciation clauses contained in multipartite instruments frequently take a form which reduces to a minimum the element of obligation involved in the acceptance of the instrument. Though the right of denunciation is often limited so as to be exercisable only after the lapse of a prescribed period, calculated either from the first entry into force of the instrument or from its entry into force for the State desiring to denounce, this is by no means always the situation, even in the case of instruments which one instinctively thinks of as having been concluded for a considerable time. Thus all but two of the Hague Conventions of 1907 were from the outset subject to denunciation at any time, and the position is the same in the case

of the Brussels Conventions on questions of maritime law, the Warsaw and Rome Conventions on private air law, and the Convention and Protocols relating to nationality questions adopted at the First General Conference for the Codification of International Law. A hardly less extreme case is that of the Conventions for the introduction of Uniform Laws relating to Bills of Exchange and Cheques; in the case of these Conventions the right of denunciation will not normally accrue until after the lapse of two years, but in "urgent cases,"—an expression which remains undefined,—they may be denounced even within the two-year period. Other conventions of the interwar period which one would tend to regard as of permanent importance but which permit denunciation at any time, no fixed initial period of validity being prescribed, include the Convention on Traffic in Opium and Drugs February 19, 1925, the Convention on the Suppression of Counterfeiting Currency of April 20, 1929, and the Convention concerning the Use of Broadcasting in the Cause of Peace of September 23, 1936. The result is that treaty obligations by means of which an attempt is being made to build up a body of international law with the economic and social content necessary in the modern world are precarious in the extreme. Where an instrument is open to denunciation at any time after the expiry of the period at the end of which the parties first become entitled to denounce it, the position is, unless the main interest in the convention is concentrated within the period of its initial validity, only slightly better than that where it is subject to denunciation at any time from the outset. A much greater degree of stability can be secured in the obligations resulting from an instrument by the inclusion therein of what is known as a tacit reconduction clause. This is a clause to the effect that if an instrument is not denounced within a stated period from the date at which it becomes open to denunciation the obligations resulting from the instrument will remain operative for another fixed period of years and will only be subject to denunciation during limited periods on the expiry of successive intervals of prescribed but sometimes varying length. device is not at all a new one. There are tacit reconduction clauses in the Hague Conventions on Private International Law of 1902 and such clauses were included in the Convention relative to the Establishment of an International Prise Court of October 18, 1907 and the Declaration of London concerning the Law of Naval War of February 26, 1909. The use of it is still however far from general even in the case of conventions of such a character that the inclusion of such a clause would seem to be obviously called for. There is no tacit reconduction clause in the Convention on Safety of Life at Sea of May 31, 1929 or the Load Line Convention of July 5, 1930. few of the conventions adopted under the auspices of the League of Nationscontain a tacit reconduction clause. There is the equivalent of such a clause in the General Act for the Pacific Settlement of International Disputes of September 26, 1928, and there are tacit reconduction clauses in the three Veterinary Conventions of February 20, 1935. There is, however, no tacit

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reconduction clause in any of the Conventions adopted at the Transit Conferences, or in the Slavery Convention of September 25, 1926, or the Convention concerning Economic Statistics of December 14, 1928, or the Convention for limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of July 13, 1931, or the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs of June 26, 1936, or the Convention for Facilitating the International Circulation of Films of an Educational Character of October 11, 1933. In the case of the international Labor Conventions, on the other hand, a tacit reconduction clause has been included in every convention adopted by the International Labor Conference since 1928; whenever a Convention of earlier date is revised (and there have been four such cases of revision so far) it is customary to include the tacit reconduction clause in the revised Convention. The existence of an appropriately defined and limited right of denunciation is of course indispensable in the absence of effective treaty revision machinery, but it cannot be too strongly emphasised that reliance on a virtually unlimited right of denunciation as a means of avoiding excessive rigidity is an essentially anarchic expedient involving the substitution for an orderly process of change by a collective decision of the reservation to the parties of the right to take on their own behalf action the effect of which may be to terminate, so far as the denouncing party is concerned and in some cases in respect of all the parties, the existence of any international rules upon the subject matter of the instrument.

The inclusion of revision clauses in instruments has now become relatively common, but it is still far from being a universal practice and many existing revision clauses are an apparent rather than a real step forward. sion which, like many of these clauses, merely declares that a given number of the parties may request the revision of the instrument at any time, or at fixed intervals, or after the instrument has been in force for a given number of years, is likely to remain no more than a theoretical acceptance of the principle of revision with little practical effect. In general, a revision clause cannot be considered satisfactory unless it fulfils the four following conditions: it should provide for a method of initiating revision proceedings which will work in practice without undue difficulty; it should place the parties under a definite obligation to participate in any such proceedings; it should, wherever possible, dispense with the need for formal ratifications of the revised instrument and qualify the unanimity rule, at any rate in respect of minor amendments; and it should define in precise terms the exact effect of revision on the obligations resulting from the original instrument. clauses which fulfil all four of these conditions are still altogether exceptional.

In the light of these five illustrations and of many similar ones which might be given, it is not, it is submitted, an ungenerous appraisal of the achievement of the inter-war period to affirm that there was during that period a conspicuous failure to exploit fully the opportunities to improve international legislative technique which so frequently exist when instruments

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are being drafted. There were numerous constructive developments which, if a systematic attempt had been made to generalise their application to the greatest possible extent, would have gone far to improve the effectiveness of the technique of the multipartite instrument within the limits set by its inherent characteristics. There was, however, little coördinated effort to this end, and the results achieved during the inter-war period must therefore be regarded as disappointing when compared to what should have been possible.

It will of course be argued that the responsibility for this situation cannot fairly be attributed to the draftsmen of multipartite instruments, that in the case of all five of the questions selected as illustrations an important political element was involved, and that it was the unwillingness of States to accept any real limitation of their sovereign freedom of action which constituted the essence of the difficulty. There is undeniable force in this argument, but it is precisely because governments and their representatives cannot, in the world as we know it, be expected to give much of their attention to systematically seeking out and taking advantage of opportunities to strengthen the structure of international institutions and improve the international legislative process that it is desirable to provide for the participation in the drafting of multipartite instruments of qualified international officers, with an appropriate status, whose duty and responsibility it shall be to focus attention on possible improvements in the technique of such instruments which would otherwise fail to secure adequate consideration. Experience has shown that, when the case for such improvements is properly presented, the advantages. to all the parties to a proposed instrument of some suggested improvement in international legislative technique are frequently accepted as outweighing the disadvantages of some loss of their individual freedom of action. draftsman of multipartite instruments must necessarily work within the limitations set by the policies of the prospective parties to such instruments, but within those limitations imagination and persistence can frequently make a considerable contribution to the improvement of international legislative technique. The contribution which he made during the inter-war period was, it is submitted, totally inadequate to the needs of the time.

This was as true in small matters as in great. Apart from the broader questions of the policy and strategy of the improvement of international legislative technique, the mere technical draftsmanship of international instruments has continued to be very defective. On the narrowest view of his responsibilities it is the duty of the draftsman of a multipartite instrument to take due account in the framing of instruments of any relevant rules of international law, to secure a clear and orderly presentation of the ideas which it is intended to embody in the instrument, to ensure the concordance of the different versions of the instrument when the text consists (as it so often does) of versions in different languages, and to maintain the greatest possible degree of uniformity of terminology between instruments

dealing with kindred subjects and avoid the existence of inconsistencies between such instruments. It must be regretfully acknowledged that even these duties, which, though significant, are entirely technical in character, have frequently not been performed in an adequate manner in the past. Doubtless there has been a considerable improvement in the clarity of the language employed in multipartite instruments, and the obstacles in the way of further improvement are partly political in character. Obscurities of meaning are frequently due to the difficulty of reconciling divergent standpoints in the course of negotiation, and discordances between different versions of multilingual instruments are sometimes due to the fact that agreement has been reached in an international conference on the basis of an equivocal translation. No amount of effort on the part of the draftsman will suffice to eliminate entirely these sources of difficulty, though the extent to which he can contribute towards their elimination by facility in finding the happy phrase which reconciles conflicting standpoints should not be underestimated. For the lack of orderly presentation and of uniformity of terminology between instruments dealing with kindred subjects, which also continue to be all too common faults of multipartite instruments, he must, however, bear a heavy measure of responsibility. Perhaps his chief excuse on this score is that he has often not enjoyed a sufficient measure of authority to ensure respect for his views under the difficult conditions which still tend to be typical of the negotiation of international instruments, even upon technical subjects.

In a few cases there has been a considerable improvement in technical draftsmanship technique. Such a claim may reasonably be made in respect of the International Labor Conventions. Substantial progress has been made in achieving a systematic and orderly presentation of the provisions of these Conventions. In the interest of clarity and neatness of arrangement, articles are subsectioned whenever possible and all paragraphs and subparagraphs are suitably numbered or lettered in accordance with a logically defensible system applied with reasonable consistency. Care has been taken to use the form of a proviso in proper cases only and not to use it for the statement of conditions. There is, of course, still great scope for further improvement, but a very considerable improvement has already been effected. It was only during the latter part of the inter-war period that settled rules of style were used by the International Labor Conference but in the International Labor Code, 1939, a codification of all the international labor conventions and recommendations, the rules of style evolved in more recent years have been followed in the presentation of the earlier instruments. It is not surprising that the International Labor Conference should have been a pioneer in the improvement of the technique of draftsmanship for it has a closer resemblance to a permanent legislative body than any other existing international organ and, under peacetime conditions, adopts Conventions in such numbers and at such a frequency as to make it a natural milieu for the

development of a systematised drafting technique. It has not, however, been alone in the field and there are a number of other instruments or drafts which require serious consideration from students of the improvement of drafting technique. Among these special reference should be made to those prepared by the International Technical Committee of Legal Experts on Air Questions, the Institute for the Unification of Private Law, and among unofficial drafts, to those prepared by the Harvard Research in International Law. The standard of draftsmanship of most of the instruments produced by League of Nations Conferences has been very uneven. The standard of draftsmanship of many of the translations contained in the League of Nations Treaty Series has also been open to criticism.

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In the light of the inter-war experience it would seem possible to give a great stimulus to the improvement of international legislative technique after the present war by the establishment of an International Parliamentary Counsel's Office responsible for centralising as much as possible of the drafting of international instruments. The existence of such an Office, which would necessarily work in close cooperation with the legal advisers of the principal foreign offices, might, it is submitted, have a marked effect, both in promoting the generalisation of substantial improvements in international legislative technique and in raising the standard of technical draftsmanship. No interference with the autonomy as regards questions of policy of the institutions or conferences using the services of the International Parliamentary Counsel's Office would be necessary, nor would that Office necessarily supplant the special arrangements of any institutions under the auspices of which large numbers of instruments are negotiated which maintain an adequate standard of draftsmanship. It would, however, be able to act as a coordinating agency for specialised international drafting services and its existence should be a boon to conferences of an ad hoc character and periodical conferences which do not meet at frequent intervals.

Such an International Parliamentary Counsel's Office should, it is submitted, have three main responsibilities. It should be responsible for preparing and keeping up to date the somewhat elaborate reference books which constitute the indispensable tools without which no really serious attempt can be made to secure an all-round improvement in the technical draftsmanship of international instruments. It should, except in any cases in which satisfactory alternative arrangements exist, cooperate in the preparation of the drafts of multipartite instruments. It should have authority to formulate proposals for the improvement of international legislative technique, either in general or in the case of particular instruments which are in course of preparation.

Elaborate works of reference are indispensable equipment for the practitioners of any complex legal system, whether they be judges, counsel, or legislative draftsmen. Notable progress was made during the inter-war period in the production of works of reference for practitioners of international law, notable illustrations being the League of Nations Treaty Series, the Publications of the Permanent Court of International Justice, the Annual Digest of Public International Law Cases and Hudson's International Legislation. There is still, however, much to be done to assemble the reference material which is essential in order to permit of a systematic attempt to secure an all-round improvement in international legislative drafting. The main works of reference which are necessary for this purpose are: (a) a manual of rules of style, (b) a manual of common forms for standard articles, (c) a subject index of the content of multipartite instruments, (d) a multilingual glossary of translations used in multipartite instruments consisting of versions in two or more languages, (e) an index of terms defined in multipartite instruments, and (f) a list of short titles of multipartite instruments.

A reasonable measure of uniformity in the orderly presentation of the provisions of instruments should not be unattainable if a recognised manual of rules of style were to be in general use. Hitherto the arrangement of the provisions of the majority of instruments has been completely chaotic. The rules of style followed in the International Labor Code might well be taken as the starting point in the preparation of such a manual. These rules, which originated as an adaptation to international requirements of the general rules followed in the drafting of modern British Statutes, have been found sufficiently flexible to be applied with a reasonable standard of consistency throughout a codification embodying sixty-seven Conventions and sixty-six They were, however, still in process of constant de-Recommendations. velopment at the end of the inter-war period and regarding many points no fixed practice had yet evolved by that time. It would now, of course, be necessary to reconsider these rules in the light of various United Nations instruments which have been drafted on the basis of American models, but there is no uniformity of style and arrangement as between the different United Nations instruments and the complicated construction of some of them compares unfavourably with the relative simplicity and flexibility of British statutory practice which I.L.O. experience has shown to be readily adaptable to international requirements and the special needs of multi-The proposed manual would be an international equivalingual drafting. lent for works such as Lord Thring's Practical Legislation and Sir Courtenay Ilbert's Legislative Methods and Forms. It would deal with questions like

'The draftsmen of international instruments will find the following to be specially helpful: 'Lord Thring, Practical Legislation, 1902 (2nd ed.); Sir Courtenay Ilbert, Legislative Methods and Forms, 1901, and The Mechanics of Law Making, 1914; Sir Alison Russell, Legislative Drafting and Forms, 1938 (4th ed.); Ernst Freund, Legislative Regulation, 1932; H. Nabbé, La préparation des lois, 1901; R. von Mohl, "Die Abfassung der Rechtsgesetze," in Staatsrecht, Voelkerrecht und Politik, 1862, Vol. II, pp. 375-633; American Bar Association, Special Committee on Legislative Drafting, Bill Drafting and Legislative Reference Bureaux—Report of the Special Committee on Legislative Drafting, 1913, Report of the Special Committee on Legislative Drafting to be presented at the meeting of the American Bar Association, October 20-22, 1914; also The Conference of Commissioners on Uniformity of Legislation in Canada, Rules

the subdivision of instruments and of articles, the proper use of moods and tenses, uniformity of punctuation, the proper use of provisos, methods of stating conditions, forms of definition clause, and such matters, all of them matters highly technical in character but all of them important from the standpoint of securing clarity and logical coherence in the presentation of the provisions of instruments. An essential purpose of the manual would be to indicate how the differing requirements of languages which may be very different in structure and traditions can be reconciled when applying such rules to multilingual texts.

The existence of a manual of common forms for standard articles could give a great stimulus to the adoption of suggestions designed to remedy the characteristic shortcomings of the technique of international legislation by means of the multipartite instrument. Such a manual should contain. inter alia, general forms for instruments to be adopted by international bodies in place of signature by plenipotentiaries and provisions regarding such matters as procedure of ratification, procedure in event of failure to come into force within a prescribed period, effect on transactions current at time of entry into force, extent of colonial application, procedure regarding reservations, cooperation between parties to secure application, penalties for violations by individuals, communication of information regarding application, powers of investigation regarding application, procedure for interpretation, method of termination, procedure for revision or amendment, effect of revision or amendment on obligations resulting from original instrument, effect of termination or modification on current transactions and acquired rights, relationship to instrument of international bodies to which functions are attributed thereunder, value of versions of instrument in different languages, The manual should contain particulars of the instruments in which

of Drafting together with Observations and Suggestions on the Drafting of Legislation adopted by the Conference. Reference may also be made to Jeremy Bentham, The Theory of Legislation, 1831; Arthur Symonds, The Mechanics of Law Making, 1835; George Coode, On Legislative Expression, 1848; Ashton R. Willard, A Legislative Handbook, 1890; William Fulden Craies, A Treatise on Statute Laws, 1936 (4th ed.); Ernst Freund, Legislative Drafting, Address delivered at the First Annual Meeting of the Bill Drafting Conference, Chicago, Illinois, August 29, 1926; Chester Lloyd Jones, Statute Law Making in the United States, 1912; Gustavus Adolphus Weber, Organized Efforts for the Improvement of Methods of Administration in the United States, 1919; Thos. Ignatius Parlminson, Cases and Materials on Legislation, 1936; Duke University, Legislation in North Carolina: a legislative handbook prepared by the Department of Legislative Research and Drafting, School of Law, Duke University, 1932; Statute Law Making in Iowa, being Vol. III of Applied History, published by the State Historical Society. of Iowa, 1916; Indiana Bureau of Legislative Information, Legislative Bill Drafting, 1914; Sveinbjorn Johnson, "Statute Law Making with Suggestions to Draftsmen," in Quarterly Journal of the University of North Dakota, Vol. V, No. 2 (Jan. 1915), pp. 93-119; Ernest Briencken, Hints on Drawing Legislative Bills, 1908; J. H. Leek, Legislative Reference Work, A Comparative Study, 1925; Joseph Perkins Chamberlain, Legislative Processes: National and State, New York, 1936; Robert Luce, Legislative Procedure, 1922, Legislative Assemblies, 1924, Legislative Principles, 1930, and Legislative Problems, 1935.

each standard form has been used and of all important questions of interpretation or application which may have arisen in connection with any form. Variations from the standard forms should be noted and any available information regarding the reasons for variation given.

A subject index of the content of multipartite instruments is necessary in order to permit proper consideration of the relationship between provisions which are analogous in character or deal with related problems. practically useful such a subject index must be extremely detailed and contain innumerable cross-references. The International Labor Code, 1939. contains a large number of notes drawing attention to significant similarities and contrasts between international labor conventions dealing with related questions, and these notes are indexed. The proposed subject-index of instruments should, in addition to indexing the technical subject matter dealt with in instruments, contain material of this kind and should also facilitate the tracing of provisions which may be relevant in connection with particular rules or problems of international law. The three types of material may be illustrated by three typical questions to which it should be possible to find a full and reliable answer in the index with a minimum of delay. How many multipartite instruments contain provisions regarding shipwreck, and in what connections do they deal with the subject? How many instruments specify particulars to be contained in contracts? How many instruments define the extent of powers to be exercised by an authority of one State over vessels of another State? Unless such information is available in a usable form, no draftsman, no matter how wide may be the range of his knowledge of modern multipartite instruments, can draft texts with reasonable confidence that he appreciates the main interrelations between the new instrument and existing instruments.

A multilingual glossary of translations used in multipartite instruments consisting of versions in two or more languages is necessary in order to permit of the standardisation of the translations used for terms in common use. In the past it has been not uncommon for a term used in one version of a text several times with the same meaning to be rendered in the version of the text in another language in a profusion of different ways. This degree of confusion can be avoided with a modicum of care without the aid of any special reference books, but in view of the bulk and complexity of modern multipartite instruments it is impracticable to attempt any considerable measure of standardisation of translations as between different instruments, and especially as between instruments negotiated under the auspices of different international bodies, unless an adequate multilingual glossary is at the disposal of the draftsman.⁵

⁵ English-French and French-English glossaries of translations used in the texts of international labor Conventions have been part of the office equipment of the Legal Advisers of the International Labor Conference for some years, but something with a much wider range of both subject matter and languages is required. Mr. Raoul Aglion, Legal Adviser of the

The proposed index of terms defined in multipartite instruments would be an international equivalent for the Index of Statutory Definitions of the United Kingdom. Its purpose would be to facilitate the avoidance of unnecessary variations in the manner in which terms are defined in different The confusion and inconsistencies resulting from such unnecessary variations, in addition to impairing the value of the instruments concerned as a coherent body of international obligations, are liable to cause considerable difficulty during the drafting of national legislation designed to give effect to a number of instruments dealing with cognate subjects. index of terms defined in international labor conventions was prepared in the International Labor Office for the use of the legal advisers of the International Labor Conference and similar documents of limited scope may have been in use elsewhere, but no general index of terms defined in multipartite instruments has ever been published. Such an index should as a minimum include the texts of all definitions contained in multipartite instruments with full digests of all interpretations of these definitions given by international and national tribunals. It should be multilingual. It could usefully include definitions of terms used in multipartite instruments which are contained in the national laws or regulations giving effect thereto, with digests of any judicial decisions of importance relating to such definitions.

A list of short titles which, even though not technically authoritative, was in practice accepted as such, would greatly simplify the citation of multi-The full titles of the majority of international instrupartite instruments. ments are too long and clumsy for convenient citation. Popular abbreviations for many of them are in current use, and many of these abbreviations (e.g. Geneva Convention, Opium Convention, Arms Traffic Convention) are not sufficiently precise to identify the instrument under reference. A neat and short form of citation is a great convenience in the drafting of the crossreferences from one instrument to another which occur in the texts of instruments with increasing frequency as a result of the growing number of interrelations between the provisions of different instruments, and the existence of recognised short titles would simplify enormously both the compilation and the use of the indexes and glossaries necessary to permit of a systematic attempt to improve drafting technique. The international labor conventions adopted in 1934 and subsequent years prescribe a mode of citation by a short title, and the International Labor Office has attributed short titles to the international labor conventions adopted in earlier years.

French Embassy in Washington, is about to publish a Dictionnaire de Termes Juridiques Anglo-Americains et François (Droit privé et Droit public) which should be invaluable to the draftsman of multipartite instruments. An appropriate international equivalent for Words and Phrases, West Publishing Company, St. Paul, Minnesota, 1940, 45 vols., with cumulative annual pocket parts, and Words and Phrases Judicially Defined, under the general editorship of Roland Burrows, K.C., Butterworth, London, 1943, 5 vols., will, however, also be necessary.

of other instruments, the existence of any provision on the subject is still extremely rare, and it would therefore be necessary to devise appropriate short titles for the majority of existing instruments.

These suggested works of reference would be designed primarily to facilitate the drafting of multipartite instruments. Their value would, however, be greatly enhanced if their scope could be progressively extended to include material from bipartite instruments such as definitions and translations of technical terms. It frequently happens that multipartite and bipartite instruments deal with the same subject matter, and it is clearly desirable to secure the widest possible measure of uniformity of terminology in all international instruments irrespective of the number of parties or the open or closed character of the instrument.

All of the suggested works of reference would lose most of their value if not kept constantly up to date. During the inter-war period new multipartite instruments were framed almost every week. The seven volumes of Hudson's International Legislation list 505 separate entries for the years 1919-... 1937, and in these volumes a considerable number of instruments appear as sub-entries. The number and bulk of instruments may well be much greaterafter the present war. The work to be done will therefore be upon a scale for which private effort is unlikely to be able to make adequate provision, and part of it could usefully be organised in close relationship with the drafting of translations for the Treaty Series of the League of Nations for the continued publication of which appropriate arrangements will presumably be made by the proposed new general international organisation. All of this work would be done with a much better appreciation of practical requirements than could otherwise be secured if it were done under the general direction of those who are entrusted with the more responsible duties which it is suggested should be assigned to the International Parliamentary Counsel's Office.

Legislative draftsmanship is not an art which can be reduced to a few simple rules and then practised without further difficulty if adequate works of reference are available, even within a national milieu and when only one language needs to be considered. Multilingual drafting is a highly specialised craft. It is largely because it has not been sufficiently recognised as such and has been attempted by many an inexpert hand that the general standard of draftsmanship of international instruments has remained poor. The second and main purpose of the proposed International Parliamentary Counsel's Office would be to make a high standard of skill available for the drafting of all multipartite instruments. It is self-evident that the services of such an Office would not always be used, even in cases in which no other satisfactory arrangements existed. Political prejudices, administrative exclusiveness and last-minute improvisations would continue to play their accustomed part in making the task of endeavouring to improve international legislative draftsmanship a difficult one, but the existence of improved facilities for the drafting of multipartite instruments should gradually exert

a substantial influence. These facilities might also be employed from time to time for the drafting of important bipartite instruments likely to be widely used as models.

Much of the potential value of an International Parliamentary Counsel's Office would, however, be lost if its mandate were too narrowly drawn. The problems of the technique of draftsmanship merge into the much broader problems of the improvement of international legislative technique as a tool of economic and social policy. These broader problems are frequently closely related to questions of policy which no International Parliamentary Counsel's Office could be competent to decide, but such an Office could perform valuable service, firstly in promoting the generalisation of improvements in legislative technique for which precedents already exist, and secondly in suggesting further analogous developments for consideration from time to time. The potential value of such work must not, of course, be overestimated, but the improvement of international legislative technique would appear to be a sine qua non of making effective the pledge contained in the Atlantic Charter of "the fullest collaboration between all nations in the economic field, with a view to assuring to all improved labor standards. economic advancement and social security." A concerted effort to eliminate those of the weaknesses of current international legislative technique which are not limitations inherent in the character of the technique as one of international cooperation rather than of world government therefore has its allotted part in the wider strategy of world organisation. The effort which is required will be an arduous one; it will involve giving meticulous attention to an infinite number of details over a long period of years; and it is therefore unreasonable to expect any substantial measure of success unless we are prepared to create appropriate permanent machinery for the purpose, such as an International Parliamentary Counsel's Office, and to give to the International Parliamentary Counsel a place and status in the general structure of world institutions which will afford him adequate opportunities of influencing the future development of international legislative technique.

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THE MEANING AND THE RANGE OF THE NORM PACTA SUNT SERVANDA

By Josef L. Kunz Of the Board of Editors

The norm 1 pacta sunt servanda, 2 which has constituted "since times immemorial the axiom, postulate and categorical imperative of the science of international law" and has very rarely been denied on principle, 4 is undoubtedly a positive norm of general international law. But the meaning of this norm is controversial. Most writers lay the accent on the term servanda. One school of thought affirms that "treaties" are always binding, whereas a second tells us that the norm can only mean that valid treaties are binding. 5 Within this second school of thought some writers object that the norm appears as a deus ex machina, as international law does not lay down rules for the validity of international treaties, 5 whereas others maintain, that not all, but only certain treaties are binding, that the norm admits "exceptions," or speak of the relativité de la règle pacta sunt servanda.

- ¹ For literature see Research in International Law under the auspices of the Harvard Law School, Part III, Law of Treaties, in this JOURNAL, Vol. 29 (1935), Supplement, and the literature there cited (pp. 671-685). Further recent literature: article "Traités" in the Dictionnaire de l'Académie Diplomatique Internationale, Vol. II, pp. 954-970 and Vol. III, 208 pp. (not numbered); F. Aragues, El tratado como negocio jurídico, Madrid, 1933; H. Kraus, Système et fonctions des traités internationaux, Paris, 1935 (Hague Academy of International Law, Rec. des Cours, 1934, Vol. II, pp. 317-399); A. F. Frangulis, Théorie et pratique des traités internationaux, Paris, 1938; A. D. McNair, The Law of Tréaties: British Practice and Opinions, New York, 1938; H. Kelsen, Contribution à la théorie des traités internationaux, in Rev. Intern. de la Théorie du Droit, Vol. X (1936), pp. 253-292, and El Contrato y el tratado analizados desde el punto de vista de la teoria pura del derecho, Mexico City, 1943.
- ² M. de Taube, L'inviolabilité des traités, in Rec. des Cours, 1930, Vol. II, pp. 295-387; J. B. Whitton, La règle pacta sunt servanda (same, 1934), Vol. II, pp. 151-276, and in Rev. de Dr. Int., Vol. XVIII (1936), pp. 440-480 and Int. Concil, 1935, no. 317, pp. 395-430; H. Bauer, Der Grundsats pacta sunt servanda im heutigen Völkerrecht, Marburg, 1934; H. Kaira in Acta Scandinavica Juris Gentium, Vol. VII (1936), pp. 39-67.
 - de Taube, as cited, p. 295.
- ⁴ Macchiavelli, Spinoza (on this thinker and international law Cf. Verdross in Zeitschrift für offertliches Recht, Vol. VII (1927), pp. 100 etc.; H. Lauterpacht in Br. Y. B. I. L., Vol. VIII (1927), pp. 89-107). Cf. also Shamasastry R, Kantiliya's Arthasastra, Mysore, 1923 (2nd ed.).
- ⁶ Recently: Ed. Vitta, La validité des traités internationaux, The Hague, 1940, pp. 29-30. See also Ulpianus de pactis: Dig. II, 14, 7; Code civil français, Art. 1134. Publs. of the P.C.I.J., Ser. B, No. 10, p. 20: ("A state which has contracted valid international obligations, is bound . . .").
- ⁶ Thus J. L. Brierly, The Law of Nations, Oxford, 1936 (2nd ed.), p. 208. F. Pfluger, Die einseitigen Rechtsgeschäfte im Völkerrecht, Zurich, 1936, pp. 20-21.
 - ⁷ Thus G. Scelle, Précis de Droit des Gens, Vol. II, Paris, 1934, p. 336.

But if the meaning of the norm be that only valid treaties are binding then, we are told, the norm is only a special formulation of the general axiom that one must obey the law. From there it is only one step to the further attitude that *pacta sunt servanda* says no more than that law is valid and is, therefore, an empty tautology. 10

The exponent of the principle is, in consequence, confronted with the following dilemma: Either everything which pretends to be a treaty is valid, or only valid treaties must be kept-indeed a tautology, as the characteristic attribute of every legal norm is its binding validity. But the conclusion, sometimes reached, that our norm is meaningless, is by no means justified; it is only necessary to understand it correctly. Every legal order regulates for itself the creation of its norms. Pacta sunt servanda is a customary norm of general international law, a constitutional norm of a superior rank, which institutes a particular procedure for the creation of norms of international law, namely the treaty-procedure. International law can be created by custom 12 or by treaties. These treaty-created norms, like the contents of a contract in municipal law,18 have the legal reason of their obligatory force not in the manifested concord of the will of the states, but in the superior norm pacta sunt servanda, which orders that the manifested concord of the will of the states shall produce, through the treaty procedure, valid norms of international law. Contrary to both the schools mentioned, which put the accent on servanda, the accent must be put on pacta.

Π

To understand correctly the problem of the norm pacta sunt servanda it is necessary to avoid the confusion, often observable in the literature of the subject, which is produced by the fact that the term "treaty" is used in an equivocal way, sometimes meaning the procedure by which treaty law is

Thus Whitton, Rec. des Cours, 1934, Vol. II, p. 218. Unequivocally Bourquin: "Pacta sunt servanda n'est qu'une forme particulière d'un principe plus vasté, d'un principe qui s'applique à toutes les normes: dans la mesure de sa compétence spatiale et temporelle, la loi doit être obéie universellement et continuellement"; Règles générales du droit de la paix, Rec. des Cours, 1931, Vol. I, pp. 5-229, at p. 80.

Thus Baumgarten, Grundwige der juristischen Methodenlehre, Berne, 1939, p. 27. W. Schiffer, Die Lehre vom Primat des Völkerrechts in der neueren Literatur, Vienna, 1937, pp. 183, 185, 188

¹⁰ Thus H. Heller, Die Souveranität, p. 132.

¹¹ This insight has been clearly formulated by P. Chailley: "Le traité est la procédure constitutionnelle suivant laquelle sont créées des normes juridiques communes à plusieurs Etats" (La nature juridique des traités internationaux selon le droit contemporain, Paris, 1932, p. 331). In the same sense the two writings by Kelsen cited above, note 1.

¹² The fact that international law can also be created by custom renders the theory according to which the norm pacta sunt servanda constitutes the fundamental norm of international law untenable. This construction, originally defended by Kelsen and Verdross, has long been abandoned by these writers, while it is still retained by Anzilotti.

¹² Carnegie v. Morrison, Supreme Judicial Court of Massachusetts, 1841, 2 Metc. 381.

created and at other times meaning the treaty norms created by this procedure.14

The meaning of our norm consists in the institution by general international law of a particular procedure—the treaty procedure—for the creation of norms of international law. The problem of the range of these norms is the problem of how far treaty-created norms are valid. In this respect it makes no difference whether the treaties are what is termed "contractual" or "legislative" in nature. For the real difference between these two types of treaties ¹⁵ is not that the first create no legal norms whereas the second do; the real difference is that the first create merely individual and concrete norms whereas the second create general and abstract norms.

Down to the present time all general international law is customary law. Treaties, whether "contractual" or "legislative," create only norms of particular international law. The present-day international law is highly decentralized, not only as to its creation but also as to the spatial and personal sphere of its validity: relatively few norms are binding on all the members of the international community; the bulk of present day international law is particular international law, treaty-created law. But this treaty law has its legal raison d'être in the norm of general international law pacta sunt servanda.

The validity of treaty-created norms, like that of all legal norms, is conditioned by the existence of a legal order, of which these norms form a part, by the presence of the norm-creating act and the absence of a norm-abolishing fact. Just as the Constitution of the United States lays down norms for the procedure by which federal law of a hierarchically lower grade—statutes—shall be created, and for the termination of statutory law, it is for general international law to lay down the legal conditions for the procedure by which treaty norms may be created and for the termination of treaty norms. It is intended to give a brief theoretical survey of these two problems and to discuss, at the end of this study, some general theoretical problems bearing on the validity and termination of treaties.

III

As far as the presence of the norm-creating act is concerned, the conditions for the validity of the treaty as a form of action, 16 are primarily procedural in character, prescribing how the agreement of wills of the contracting parties

¹⁴ This distinction is very clearly emphasized by Chailley, work cited, above, note 11, p. 123, and in the two writings of Kelsen already cited.

¹⁵ Fundamental the observations by Kelsen, ("Contribution," p. 260, "Contrato," pp. 11-14, 25-36).

¹⁶ See the literature quoted above, note 1. Vitta, work cited above, note 5. G. Conmoul, Des conditions de validité des traités internationaux; Toulouse, 1911; J. H. W. Verzijl, "La validité et la nullité des actes juridiques internationaux," Rev. de Dr. Int., Vol. XV (1935), pp. 284-339; M. Houlard, La nature juridique des traités internationaux et son application aux théories de la nullité, de la caducité et de la révision des traités, Bordeaux, 1936; A. Verdross, Völkerrecht, Berlin, 1937, pp. 80-90.

has to be manifested; these conditions of validity deal with the capacity of the contracting parties, the competence of the concluding organs, real consent, form, conclusion of treaty. But general international law may contain also norms with regard to the contents of treaties.

The first condition for the validity of the treaty as a procedure is that it has been concluded between parties, which, under international law, have the capacity to conclude treaties. Such capacity is by present day international law vested primarily in sovereign states, *i.e.* in legal communities which are directly, immediately, and exclusively subject to international law, but also in the Holy See, certain confederations of states, the League of Nations, *etc.* Some communities may have a competence to conclude treaties limited in point of time or restricted to the conclusion of certain treaties.¹⁷

In consequence "treaties" concluded with parties which have no treaty making power under international law do not create valid treaty norms; ¹⁸ on the other hand treaties made by sovereign states contrary to restrictions imposed upon them by treaty law while illegal are nevertheless valid. ¹⁹

From the problem of the capacity of the parties must be clearly distinguished the problem of the competence of the concluding organs. It is, of course, for international law alone to determine these organs. Sometimes international law determines these organs directly, as in the case of the competence of military commanders in the field to conclude treaties of armistice or capitulation. Similarly a fundamental treaty, such as the Universal Postal Convention, may authorize organs of the Union to conclude treaties of a specified character. In general the primitive international law of today has no special legislative organs of its own; it has nevertheless other organs, composite organs, composed of the organs of the states, and general international law delegates to the states the authority of determining these organs through their Constitutions. The Constitutional requirements, including such requirements as the necessity for parliamentary consent, 20 are interna-

¹⁷ For example, India as a member of the League of Nations; insurgents recognized as a belligerent party.

¹⁸ Such as "treaties" made with native chieftains.

¹⁹ We may also mention the problem of treaties made with vassal or protected states; see Bulgarian-Serbian Peace Treaty of 1886; Anglo-Egyptian Sudan Treaty of Jan. 19, 1899; in the case of the Anglo-Thibetan Treaty of Sept. 7, 1904, China protested and Britain concluded, in consequence, the Convention of April 27, 1906, with China.

With regard to this problem opinion is divided into at least four different schools of thought: the first distinguishes between the internal and the international validity of a treaty; the second pretends that municipal law alone controls; a third, or intermediary, doctrine holds treaties to be invalid only if constitutional restrictions have been "manifestly" violated. All these doctrines are untenable, as a treaty can only be either valid or not, and as the conditions for the validity of an international treaty can be determined only by international law. But the fourth doctrine, holding constitutional law to be internationally wholly irrelevant (Anxilotti, Verzijl, Vitta) is in contradiction with positive international law.

tionally relevant for the validity of treaties,²¹ because international law contains a *renvoi* to the Constitutions of the states. Under the principle of effectivity, however, the *renvoi* is to the effective Constitution.²² That is why *e.g.* so-called "executive agreements" are internationally valid treaties.

In consequence treaties are invalid if the concluding organ was wholly incompetent or unauthorized under Constitutional law or if it has acted in excess of authority. Many further interesting problems arise which can only be mentioned here: can such invalidity be invoked only by the adverse party or by both the parties? Can such treaties be confirmed or is their invalidity waived by partial performance or by the fact that the treaty has, for a long time, been acted upon; in the latter case may a state be estopped from invoking the invalidity of the treaty? ²⁵

The law must further lay down rules with regard to the real consent ²⁶ of the parties. Essential and excusable error, going to the fundamentals of the treaty, will be considered as a factor in the situation. It is equally universally recognized that a treaty may be invalidated by the fraud of one party. But error and fraud do not invalidate a treaty automatically: they must be invoked by the aggrieved party and can only be invoked by the aggrieved party; an international court will not consider these elements ex officio.

It is, similarly, unanimously agreed that duress ²⁷ exercised against the person of the organ gives the aggrieved party the right to invoke the invalidity

- ²¹ That is why Art. I of the Havanna Convention on Treaties of 1928 is nothing but the restatement of the positive general international law.
- ²² Problem of the validity of the Colombian-Peruvian Treaty of Frontiers of 1922-1928 in the Leticia Conflict (see P. de Lapradelle in *Rev. de Dr. Int.*, Vol. XI (1933), pp. 185-209).
- ²² H. M. Catudal: "Executive Agreements, a Supplement to the Treaty-making Procedure," George Washington Law Review, Vol. X (April, 1942), pp. 653-669.
 - 24 So a political agreement concluded by military commanders in time of war.
 - ²⁵ McNair, work cited above, note 1, pp. 38-44.
- ²⁵ B. Shatsky, La valiaité des traités, Rev. de Dr. Int., Vol. XIII (1933), p. 545; Scialoja, I vizi di volontà nelle leggi e nei trattati internazionali, Riv. Dir. Pubblico, 1929, p. 4; H. Weinschel, Willensmängel bei völkerrechtlichen Verträgen, Zeitschrift für Völkerrecht, Vol. XV (1930), p. 446; Atassy, Les vices de consentement dans les traités internationaux à l'exclusion des traités de paix, Geneva, 1930; J. Tomsitch, La reconstruction du droit international en matière des traités, Paris, 1931; W. Pasching, Allgemeine Rechtsgrundsatze über die Elemente der völkerrechtlichen Verträge, Zeitschrift für öffentliches Recht, Vol. XIV (1934), pp. 26-61.
- 17 Roth, Zwang beim Abschluss von völkerrechtlichen Verträgen, 1923; Scialoja, Violenza, errore, e dolo nei trattati internazionali, Scritti . . . in onore di A. Salandra, 1928, p. 25; Golbs-Wilms, Erzivungene Staatsverträge, 1933; Zanten, Over verdragen totstandgekomen onder den invloed van dwang, Rechtsgeleert Magazijn, 1934, p. 97; A. Cavaglieri, La violenza como motivo di nullità dei trattati, Riv. Dir. Int., Vol. XXVII (1935), pp. 4-23; A. Verdross, Anfechtbare und nichtige Staatsverträge, Zeitschrift für öffentliches Recht, Vol. XV (1935), p. 289; F. Bleiber, Aufgezwungene Verträge im Völkerrecht, Zeitschrift für Völkerrecht, Vol. XIX (1935), pp. 385-402; P. Schön, Erzwungene Friedensverträge, same, Vol., XXI (1937), pp. 277-296; L. Buza, Der Zwang im Völkerrecht, same, Vol. XXI (1937), pp. 420-440; H. Widmer, Der Zwang im Völkerrecht, Leipzig, 1936; Moigliano, In tema di vizi di volontà e di trattati imposti con violenza, Turin, 1938.

of the treaty thus concluded. But while the question of the effect of duress, exercised against the state, is the subject of great controversy in current literature on the subject, under positive international law treaties imposed by force are valid,²⁸ revealing again the primitive character of present-day international law.

Juristic doctrine and, to a certain extent, the practice of states²⁹ in the inter-war period have shown a tendency to hold treaties voidable on account of duress. The doctrine proceeded mostly along the lines of a revival of the distinction between justifiable and unjustifiable force. In a more restricted way, it was argued that peace treaties imposed by force are in general valid, and are voidable only on account of illegal force; in a broader form the League Resolution of March 11, 1932, the so-called Stimson-Doctrine on non-recognition, and similar acts show a tendency to distinguish between legal and illegal force. But as a matter of positive international law, the norm of the validity of treaties imposed by force stands.

General international law prescribes no particular form for treaties; ²⁰ treaties can, therefore, be concluded not only in writing, by telegram, by telephone, by wireless, but also orally and even by symbols.

As to the procedure of conclusion ³¹ of a treaty, there are, generally, three stages: negotiation, signature, ratification and exchange or deposit of ratifications. With regard to treaties subject to ratification this action (and exchange or deposit of ratifications) is a conditio sine qua non of the validity of treaties. ³² Ratification must be unconditional and embrace the entire treaty. There is no legal duty to ratify a treaty, signed by the plenipoten-

18 Scelle, while upholding the validity of peace treaties imposed by force, wants to deprive them of their character of treaties. According to him an imposed peace treaty is not a treaty but a unilateral legislative act of the victor; the signature of the vanquished is nothing but the authentic recognition of the greater force of the victor; the peace treaty as unilateral legislation by the victor comes into force on the hypothèse de la résignation du bien vaincu (Rec. des Cours, 1933, Vol. IV, p. 675; Théorie juridique de la révision des traités, Paris, 1936, pp. 44, 56, 58; Précis de Droit des Gens, Vol. II, Paris, 1934, pp. 339, 343). This construction has been adopted by Brierly (Rec. des Cours, 1936, Vol. IV, p. 208). But this construction is untenable. The truth is that treaties imposed by force are valid in primitive international law, whereas they are invalid in more advanced legal orders (Cf. Dig. 4, 2, quod metus). In municipal law also the vitiation of contracts by duress is a later and gradual development (cf. for the Common Law Williston, The Law of Contracts, New York, 1920, Vol. III, p. 2828), a development which even today is, by no means, at an end (Cf. J. Gulzell, Duress by economic pressure in N. C. Law Review, Vol. XX, No. 3 (April, 1942).

²⁹ Russian-Turkish Treaty of March 16, 1921, Art. I: "Neither Contracting Party will recognize treaties which are imposed by force on the other party."

¹⁰ Particular international law may prescribe the written form: Havana Convention on Treaties, 1928, Art. II.

¹¹ Makowski, Théorie et technique de la confection des actes internationaux, Warsaw, 1921; B. Herzog, Der Begriff der Ratifikation und die Bedeutung seiner Technik für das Völkerrecht, Kiel, 1929; F. Dehousse, La ratification des traités, Paris, 1935; F. O. Wilcox, The ratification of international conventions, London, 1935.

³² Havana Convention on Treaties, 1928, Art. V.

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tiaries of the state in question,³² except, of course, if a state is bound by one treaty to ratify another treaty.³⁴ A treaty may provide that certain provisions shall come into force prior to ratification;²⁵ a multipartite treaty may provide that it shall come into force after the deposit of a certain number of ratifications or of ratifications by certain signatories.

A treaty is subject to ratification if the document itself so stipulates or if ratification was made a condition in the full-powers of the negotiators but there exists further a general legal presumption for the necessity of ratification except where the treaty is clearly not subject to ratification. The latter is the case where negotiators are expressly authorized to conclude a treaty; with regard to military treaties concluded by commanders in time of war; with regard to treaties formerly concluded between absolute monarchs but recently between "leaders" of totalitarian states, except if they otherwise provide; ³⁶ with regard to treaties which expressly stipulate that no ratification shall be necessary; with regard to executive agreements, except if they otherwise provide.

With regard to multipartite treaties, we may mention the special problems of accession ⁸⁷ and reservations. ³⁸

General international law contains no rules as to registration or publication of a treaty as a condition for the validity of the treaty procedure; but particular international law may do so.³⁹

As regards the contents of treaties, general international law authorizes the states to conclude treaties on any matter they like. This is the general rule but the problem arises whether general international law contains legal restrictions with regard to the contents of a valid treaty. Original impossi-

- " Same, Art. VII.
- ³⁴ Peace Treaty of Versailles, Arts. 93, 534.
- ²⁶ Morocco Convention, Madrid, July 3, 1880: Martens, N.R.G., p. 624, Art. XI, par. 1; German-U.S.S.R. Treaty, Rapallo, April 16, 1922, Art. VI (League of Nations *Treaty Series*, Vol. XX (1923), pp. 247-249); Convention regarding the Regime of the Straits (same, Vol. CLXXIII, pp. 215-241).
- ³⁵ Some such recent treaties, as the German U.S.S.R. Treaty on the Soviet-German Frontier, of Jan. 10, 1941, provide (Art. IV) that the treaty comes into force at the moment of signature, but that it is subject to ratification (*New York Times*, Jan. 11, 1941, p. 8). The legal significance of ratification in such cases seems to be doubtful.
 - ²⁷ Schaber, Der Beitritt zu völkerrechtlichen Verträgen, Würzburg, 1937.
- ¹⁸ K. Scheidtmann, Der Vorbehalt beim Abschluss völkerrechtlicher Verträge, Berlin, 1939; W. Sanders, "Reservations to multilateral treaties," this JOURNAL, Vol. XXXIII (1939), pp. 488-499.
- Thus Art. XVIII of the Covenant. See, apart from Commentaries on the Covenant, Adatci-de Visscher in Annuaire de l'Institut de Droit International, Vol. XXX (1923), p. 47; C. Sevens, Le régime nouveau des traités internationaux, Gand, 1925; König, Volksbefragung und Registrierung beim Völkerbund, Leipzig, 1927; Stieger in Zeitschrift für öffentliches Recht, Vol. VII (1928), p. 227; F. Dehousse, L'enregistrement des traités, Liége, 1929; Keydel in Rev. de Dr. Int. (Sattile), Vol. IX (1931), pp. 141-160; Schwab, Die Registrierung der internationalen Verträge beim Völkerbund, Berne, 1932; L. Reitzer in Rev. Gen. Dr. Int. Pub., Vol. XI (1937), pp. 76-89.

bility invalidates a treaty. A treaty may be invalid on account of the illegality of its contents, namely if these contents are in violation of a hierarchically superior norm of general or particular international law which constitutes jus cogens. The problem of the invalidity of treaties on account of the immorality of their contents (pacta contra bonos mores) has, like that of duress, become prominent again in the inter-war period. Earlier writers asserted the principle of the invalidity of pacta turpia on the basis of natural law or on the equally jus naturae basis of the "inherent rights" of states. Such a natural law basis is again adopted by modern writers. But, legally speaking, the problem is only a special case of the invalidity of treaties on account of the illegality of their contents; for the invalidity of treaties on account of their immoral contents can, of course, legally not be based on the norm of a metajuridical system such as ethics, but only on a norm of positive international law juris cogentis.

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If the conditions laid down by international law for the treaty-procedure have been fulfilled the "treaty" in the second sense, i.e. the norms created by the treaty procedure have come into force. The problem of the temporal sphere of validity deals with the moment of the beginning and of the ending of their legal validity. Treaty-created norms become valid in the moment of the conclusion of the treaty procedure; they remain valid in time, as long as no norm-abolishing fact, as laid down by international law, has taken place.

General international law, first of all, provides that certain factors do not touch the binding validity of treaty norms: governmental or constitutional or territorial changes of the contracting parties, as long as they remain identical persons in the sense of international law.⁴⁵ Suspension of treaties,

- ⁴⁰ M. Fröhlich, Die Sittlichkeit in völkerrechtlichen Verträgen, Zurich, 1924; Bradner, Pacta contra bonos mores im Völkerrecht, Jahrbuch der Konsularakademie zu Wien, 1937, p. 33; A. Verdross, in Zeitschrift für öffentliches Recht, Vol. XV (1935), pp. 289-299, and Vol. XVI (1936), pp. 79-86; also Trattati contra bonos mores, in Riv. di Dir. Int., 1937, pp. 3-11 and "Forbidden Treaties in International Law," in this JOURNAL, Vol. 31 (1937), p. 571.
- ⁴¹ M. Ohmann, Dissertatio de pactis sub conditione turpi, Upsala, 1770; E. Vattel, Le Droit des Gens, Paris, 1758, Book LII, Chap. XH, par. 160 and Book LIV, chap. IV, par. 36. ⁴² G. Scelle in Rec. des Cours, 1933, Vol. IV, p. 448; Salvioli, same, p. 75.

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- ⁴⁸ Thus Oppenheim, who asserts a customary general norm of international law to this effect: *International Law*, 4th ed. (ed. McNair), Vol. I, pp. 713-714.
- "See recent writings, apart from literature already quoted: J. L. Brierly in Transactions of the Grotius Society, Vol. XI (1926), p. 11; A. D. McNair: La terminaison et la dissolution des traités, Rec. des Cours, 1928, Vol. II, p. 463; M. Perlowski, Les causes d'extinction des obligations internationales contractuelles, Vevey, 1928; H. J. Tobin, The termination of multipartite treaties, New York, 1933.
- ¹⁵ Kiatibian, Conséquences juridiques des transformations territoriales des Etats sur les traités, Paris, 1892; L. Larivière, Des conséquences des modifications territoriales des Etats sur les traités antérieurs, Paris, 1892.

e.g. through the outbreak of war, non-recognition by a foreign government, only suspends the operation of treaties, but leaves their binding validity intact.

As to the reasons for the termination of the validity of treaty-created norms, Chailley has insisted on the *principe de l'acte contraire*, but this theory is too narrow, for a treaty can legally come to an end not only by mutual dissent but also in a different way by operation of law. The only juridically correct formula would hold that treaty-created norms remain valid as long as no fact which, under international law, causes the termination of their validity, has occured.⁴⁶

According to international law treaty-created norms cease to be binding either according to the will of the parties or by operation of law. the first group we can distinguish norm-abolishing facts stipulated in the treaty itself or subsequent mutual agreement of all the parties. norms come to an end automatically through the expiration of any period of time for which the treaty has been concluded, subject to any provisions for its express or tacit renewal (it is also possible that the parties, before such expiration, will agree upon the continuance of the treaty); through the emergence of a resolutive condition in accordance with the treaty itself; through termination by the act of a third party, if the treaty so provides.⁴⁷ Treaty norms can also automatically come to an end, in accordance with the agreement, by the unilateral denunciation of one party, if this right to denounce the treaty is given by the treaty; normally this right will be given to both or all the parties but it is legally possible for the right to belong only to one party; multipartite treaties often provide that the denunciation by one party in no way touches the validity of the treaty norms for all the other parties.

Treaty norms come automatically to an end further through mutual consent of the parties. This, the acte contraire, can consist in the mere abrogation of a treaty without replacing it by a new treaty—so-called "rescission"—or in the conclusion of a new treaty which expressly abrogates the earlier treaty, or in the conclusion between the same parties of a new treaty, the contents of which are incompatible with the earlier treaty, even if the new treaty does not expressly abrogate the earlier one. The parties are entitled to abrogate a treaty by mutual consent, even before the expiration of time for which it has been concluded, or to abrogate a treaty concluded à perpetuité. The norm that mutual consent by all the parties is necessary in law, applies also to multipartite treaties, 49 except if they otherwise provide.

Thus G. Balladore Pallieri, Diritto Internazionale Pubblico, Milan, 1938 (2nd ed.),
 p. 137.
 47 Art. VIII of the Locarno Treaty, 1925.

⁴⁸ Contrary: Kelsen, Contrato, as cited p. 74.

⁴⁰ M. Sorensen, The modification of collective treaties without the consent of all contracting parties (Acta Scandinavica Juris Gentium, Vol. IX (1938), pp. 150-173). On the question of the abrogation of the permanent neutrality of Belgium by the Versailles Treaty, to which

Renunciation by the beneficiary party to a bipartite, non-synallagmatic treaty is only a special case of termination by mutual consent, as acceptance of the renunciation is necessary.

But treaty norms can also come to an end automatically, independently of the will of the parties, by operation of law: extinction of one contracting party as a state in the sense of international law in a bilateral treaty; extinction of the object of the treaty; subsequent impossibility; ⁵⁰ inconsistency of treaty norms with later general or particular international law, if the later law consists of hierarchically superior norms *juris cogentis*; ⁵¹ desuetude; ⁵² in some cases by outbreak of war, ⁵⁸ or by way of reprisal. ⁵⁴

Treaty norms, finally, can come to an end by operation of law at the request of one party. To this group belong cancellation on account of nonfulfillment by the other party and operation of the rule of clausula rebus sic stantibus. Breach of treaty by one party does not in itself affect the validity of the treaty-norm, either for the guilty, or for the innocent party; the latter is free to insist on the continued validity of the treaty and on its fulfillment, may apply sanctions or resort to reprisals, and may ask for the reparation in damages. But it is equally clearly a norm of positive international law that the innocent party has, at its option and discretion, the right to abrogate the treaty on account of previous breach by the other party. In this case the validity of the treaty norms does not come to an end automatically, however, but only if and when the innocent party makes use of its

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Russia and Holland were no parties, cf. Le Roy, L'abrogation de la neutralité de la Belgique, 1923; H. Tobin in this JOURNAL, Vol. XXVI (1932), p. 514; Moscato, Le sorti della neutralizzazione belga dopo la guerra, in Riv. di Dir. Int., Vol. XXII (1930), pp. 379-395, 526-541, and Vol. XXIII (1931), pp. 54-66, 199-215.

⁵⁰ Subsequent physical and permanent impossibility as a reason for the termination of treaties is to be distinguished from original impossibility as a reason for the invalidity of treaties.

¹¹ Art. XX of the Covenant: H. Lauterpacht, The Covenant as "Higher Law," in Br. Y. B. I. L., 1936, pp. 54-65.

²² Yuille Shortridge & Co. (Great Britain v. Portugal) in de Lapradelle-Politis, Recueil des Arbitrages Internationaux, Vol. II, 1932, p. 105; J. L. Kunz, "Observations on the de facto revision of the Covenant," in New Commonwealth Quarterly, Vol. IV (1938), pp. 131-143.

⁵⁵ Recently: J. L. Kunz, Kriegsrecht und Neutralitätsrecht, Vienna, 1935, pp. 41-44; L. Erades, De invloed van oorlog op de geldigheit van verdragen, Amsterdam, 1938.

On the other hand, complete execution of a treaty is not a legal reason for the termination of its legal validity, notwithstanding the contrary opinion of many writers. See K. Hofbauer, L'éxécution, cause d'extinction du traité international, Rev. de Dr. Int. XX (1937), pp. 92-103).

⁵⁵ Woolsey, this Journal, Vol. XX (1926), pp. 346-353; G. Wackernagel, Zur Lehre von der einseitigen Aufhebung völkerrechtlicher Verträge, 1926.

¹⁸ Of recent writings see T. Young Huang, The doctrine of rebus sic stantibus in international law, Shanghai, 1935. Ch. Fairman, "Implied resolutive conditions in treaties," this Journal, Vol. XXIX (1935), pp. 219–236); Fusco, La clausula rebus sic stantibus nel diritto internazionale, Naples, 1936; C. Lipartiti, La clausola rebus sic stantibus, Milan, 1938.

right to abrogate the treaty, a right which must be exercised within a reasonable time after the breach of the treaty has been committed.

The problem of the *clausula rebus sic stantibus*—it must be emphasized—is equally a problem of positive law and, therefore, entirely different in nature from the purely political problem of revision of treaties. The *clausula*, insofar as it is positive law, is, further, by no means an exception to the norm pacta sunt servanda. The problem, finally, is not a specialty of international law, but exists also in municipal law.⁵⁷

The problem of the clause is, whether there exists in positive international law a norm according to which changed circumstances bring about the termination—not modification, not suspension—of treaty stipulations. It is generally recognized that if at the conclusion of a treaty the existence of certain circumstances has been taken into consideration by the parties as a presupposition for the continuance of the obligations assumed, an essential change of these circumstances can produce the termination of the treaty. The further problem as to the effect of an essential change of circumstances which have not been taken into consideration by the parties on the legal validity of the treaty norms is controversial. While this question cannot be investigated here in detail, it is theoretically important to state that the legal basis for such termination of treaty norms cannot be the "nature of things" or any other meta-juridical argument, but solely a positive norm of international law which so prescribes.

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The original validity of treaty norms depends on the validity of the treaty procedure—the presence of the norm-creating act—; the continued validity of treaty norms depends on the absence of a norm-abolishing fact. The two problems, although both of them problems de lege lata, problems of positive law, are different. But they pose a few common problems which it is proposed to investigate here theoretically. As positive international law has to lay down the norms for the original and for the continued validity of treaty norms, the first problem that arises is that of the legal sources of the validity of treaty norms in both respects. The first source, unquestionably, is general customary international law, to which the very norm pacta sunt servanda belongs. The second source consists of treaties. Often treaties contain themselves not only norms as to the capacity of contracting parties, ratifica-

⁸⁷ L. Pfaff, Die Clausel rebus sic stantibus in der Doktrin und der österreichischen Gesetzgebung, Stuttgart, 1898; M. Herzfeld, Die Stellung der clausula rebus sic stantibus im burgerlichen Gesetzbuch, Greifswald, 1917. On the common law doctrine of "frustration" see Fairman, as cited, note 56. On the French theory of "imprévision" see A. Bruzin, Essai sur la notion d'imprévision et sur son rôle en matière contractuelle, Bordeaux, 1922; J. Magnan de Bornier, Essai sur la théorie d'imprévision, Paris, 1924; Louveau, Théorie d'imprévision en droit civil et en droit administratif, Rennes, 1920; Jacquemard, La théorie de l'imprévision, 1928.

⁵⁶ See on this point H. W. Briggs, in this JOURNAL, Vol. XXXVI (1942), pp. 89-96.

tion, reservations, but also as to duration, denunciation, compatibility vel non of later treaties and so on. It is also possible that a multipartite treaty creates general and abstract norms, concerning the creation and termination of treaty norms. But no such great codification exists at the present time. The only collective treaty on this subject, the Havana Convention on Treaties of 1928, is, as to its sphere of validity, continental only; as to its contents it is extremely vague and by no means complete, and it is, finally, in consequence of the small number of ratifications, practically of little importance. It must also be borne in mind that a conventional codification of the law on treaties would itself be a collective treaty and, therefore, as to change or termination, be subject to the norms of general international law.

The "general principles of law, recognized by civilized nations" 69 as a third source of international law have in the inter-war period been particularly pressed into the service of determining the validity of treaty-created norms, especially with regard to the problems of duress and immoral subject matter.

In his Report of 1930 to the Institut de Droit International, Verdross correctly took the position that the "general principles of law" as a third source of international law have to be clearly distinguished from the "general principles of international law," that they are constituted by the general principles of law, recognized by the quasi-universality of civilized nations as positive law in foro domestico; that, even so, they must be applicable to international law, and, finally, that they are always merely subsidiary in character. But in his Hague lectures of 1935 Verdross adopted the hardly tenable thesis, developed in the meantime by his disciple Heydte, that these "general principles of law" are juris cogentis, hierarchically superior to customary and treaty law, with particular application to the doctrine of the validity of treaties. Under Verdross' influence this theory was adopted in 1935 by

69 An enormous literature on this subject has sprung up in the inter-war period. The principal writer on the subject is Verdross: Annuaire de l'Institut de Droit International, Vol. 37, Oslo, 1932, pp. 283–298; same, Paris, 1934, pp. 490–507; Luxemburg, 1937, pp. 183-189; Rev. de Dr. Int., Vol. VIII (1934), pp. 484-498; Rec. des Cours, 1935, Vol. II, pp. 195-251; Völkerrecht, Berlin, 1937, pp. 75-79; Rev. de Gen. Dr. Int. Pub., Vol. XII See further Heilborn, Rec. des Cours, 1926, Vol. I, pp. 5-63; Spiropoulos, (1938), pp. 44-52. Die allgemeinen Rechtsgrundsätze im Völkerrecht, 1928; Balladore Pallieri, I principi generali del diritto riconosciuti dalle nazioni civili, Turin, 1931; Heydte in Zeitschrift für Völkerrecht, Vol. XVI (1932), pp. 461-478 and in Die Friedenswarte, Vol. XXXIII (1933), p. 289; Wolff in Rec. des Cours, 1932, Vol. II, pp. 483-551; Scerni, I principi generali di diritto riconoscuti dalle nazioni civili, 1932; Härle in Rev. de Dr. Int. Leg. Comp., 1935, pp. 663-687; Ch. de Visscher, same, 1933, pp. 395-420; Ripert in Rec. des Cours, 1933, Vol. II, pp. 569-664; Raestad, Droit contumier et principes généraux en droit international, 1933; Pasching, in Zeitschrift für öffentliches Recht, Vol. XIV (1934), p. 26-61; Kopelmanas, in Rev. Gen. Dr. Int. Pub., Vol. XV (1936), pp. 285-308; W. Künzel, Ungeschriebenes Völkerrecht, Königsberg, 1935; P. Grapin, Valeur internationale des principes généraux du droit, Paris, 1934; Cegler, Die Bedeutung der allgemeinen Rechtsgrundsätze fur die Quellenlehre des Völkerrechts, Berlin, 1936.

Härle. The "general principles of law" became thus a modern form of natural law and Le Fur called this new natural law the "ordre public international." In the meantime Alvarez and Raestad had launched the idea that the "general principles of law" include also the "general principles of international law." This idea was accepted by Verdross in his Report to the Institut de Droit International of 1937. Here he returns to the subsidiary character of the "general principles of law" in the original sense, but proclaims that these principles in the second sense are juris cogentis.

Already this analysis of doctrinal developments shows that our theoretical problem of the sources of international law for the validity and termination of treaty-created norms is most intimately connected with the problem of the hierarchical position of these sources and with the problem of jus cogens and jus dispositivum ("pliable law"). For this problem determines the invalidity of treaties on account of the illegality of contents ab origine, and also the termination of the validity of treaties because of subsequent illegality of their contents and the so-called conflict between treaties. In

The "general principles of law" are hierarchically strictly subsidiary in character, not juris cogentis, and cannot prevail against customary or treatynorms. As to the hierarchical order of customary international law, we must distinguish between general and particular customary law. General customary law is binding on all, particular law only on certain states. But this difference as to the sphere of validity does not yet solve the problem of their hierarchical position. All depends on whether the customary law is juris cogentis or not; contracting parties can by treaty derogate not only from "pliable" particular law, binding on the same states, but also from "pliable" general customary law if it constitutes jus dispositivum. They cannot legally derogate from general customary law juris cogentis; such derogation can invalidate treaties because of original, can terminate treaties because of subsequent, illegality of contents. Such norms are rare in present-day positive international law; examples are the norm of the freedom of the seas or the very norm pacta sunt servanda.

If a party concludes a second treaty, incompatible in contents with a first treaty, with the same party, the second treaty is valid and its conclusion constitutes a termination of the validity of the first treaty by mutual consent: lex posterior derogat priori. But if a state concludes a treaty with a

**Radnitzky, Dispositives Völkerrecht, Österreichische Zeitschrift für öffentliches Recht, Vol. I (1914), p. 656; Ch. Rousseau, De la compatibilité des normes juridiques contradictoires dans l'ordre international, Rev. Gen. Dr. Int. Pub., 1932, pp. 133-192; Morelli, Norme dispositive di diritto internazionale, Urbino, 1931; J. Jurt, Zwingendes Völkerrecht, St. Gallen, 1933; Ch. de Visscher, in Rev. Dr. Int. Leg. Comp., 1933, pp. 395-420; J. Ray, Des conflits entre principes abstraits et stipulatians conventionnelles Rec. des Cours, 1934, Vol. II, pp. 635-707; R. L. Buell, The Suez Canal and League Sanctions, Geneva Special Studies, Vol. VI, No. 3 (1935); H. Lauterpacht, work cited, note 51, above; M. Sorensen, note 49; Vitta, note 5, pp. 172-208.

third state, the contents of which is in violation of an earlier treaty with another state, the second treaty is, nevertheless, valid, although the party, having concluded both treaties, is guilty of an illegal act. 62

As far as multipartite treaties are concerned, a later treaty, in conflict with an earlier treaty, is valid, if both treaties have been concluded between the same states. But more complicated problems arise, if a later bilateral or multipartite treaty, concluded by two or more, but not by all, of the parties to the earlier multipartite treaty, is incompatible with this earlier We must here distinguish several hypotheses: If a bilateral or multipartite treaty has later been concluded between parties, all members of the original multipartite treaty, it depends again on whether the later treaty derogates from norms juris cogentis or merely norms juris dispositivi of the earlier treaty. The later treaty is valid, if the earlier treaty expressly or impliedly permits treaties of this type, 63 or if the later treaty deals with norms, expressly declared by the original treaty to be juris dispositivi.64 It may be ordered by the earlier treaty that parties may by a new treaty replace the earlier treaty inter se, provided that the new treaty be open to the accession of the original parties; in such case the earlier treaty remains in force for the original parties which are not parties to the later treaty nor have adhered to it. 55 But the earlier treaty may contain norms juris cogentis; 56 in such case a later bilateral or multipartite treaty, not concluded between all the original parties, in derogation of these norms, is not only illegal, but invalid. problem applies not only to the original validity of the second, but also to the termination of the validity of the first treaty; for in the case considered less than all the contracting parties to the first multipartite treaty cannot legally change or abrogate the earlier treaty, not even inter se.67

⁶² See the Bryan-Chamorro Treaty (U.S.-Nicaragua) of 1914. In the case of Costa Rica v. Nicaragua the plaintiff state petitioned the Central American Court of Justice to decide that the treaty in question violated the rights of the plaintiff, acquired by the Canas-Jerez Treaty and that this violation rendered the Bryan-Chamorro Treaty void ("que la violación de los derechos de Costa Rica vicia de nulidad el dicho Pacto Bryan-Chamorro": Anales de la Corte de Justicia Centroamericana, Vol. V, Nos. 14–16, pp. 149, 150). But the Court decided that the Bryan-Chamorro Treaty was illegal, but not void (p. 176). Similar decision in the Case El Salvador v. Nicaragua, (Vol. VI, Nos. 16–18, 1917, pp. 168, 169–170.)

⁵⁵ Covenant, Art. XXI. Convention to coördinate, extend, and assure the fulfillment of certain treaties between the American states, Buenos Aires, 1936, Art. VII.

⁵⁴ Hague Convention V of 1907, Art. XII.

⁵⁵ Hague Convention I of 1907, Arts. 91, 93, 94; convention IV, Arts. 4, 6.

⁶⁶ General Act of the Brussels Conference relative to the African Slave Trade of July 2, 1890, Art. 96 (Martens, N.R.G., 2nd ser., p. 345), Covenant, Art. XX. See also the article of the Universal Postal Conventions which forbids members to conclude more restricted Unions in degogation of the norms of the Convention.

⁶⁷ Examples of such modification or abrogation of norms of multipartite treaties without the consent of all the original parties: Treaty of Versailles (abrogation of the permanent neutrality of Belgium); Agreement for the evacuation of the Rhineland 1929; Agreements of the Little Entente with Bulgaria and Hungary, concerning their equality in armaments 1938;

But if the later treaty, bilateral or multilateral, has been concluded by a party or parties, members of the earlier treaty, with a third state, not a member of the earlier treaty, and if the later treaty derogates from norms *juris cogentis* of the earlier treaty, the later treaty is valid, ⁶⁸ although the party or parties, members of the first treaty, are guilty of an illegal act, engaging their international responsibility.

This discussion shows the necessity of clearly distinguishing between the invalidity of treaty norms and the illegal creation of valid treaty norms. 69 Invalid treaties may be, it is said, either void or voidable. It is often said that a treaty is null (nul et non avenu, void ab initio, nichtig), if it is vitiated by such a great defect that the states attempting to conclude it do not succeed; that such a treaty is juridically negotium nullum; that the treaty is void automatically, needs no procedure of annulment; whereas voidable treaties are valid, as long as they are not declared void at the request of the aggrieved party. As a law does not deal with naked facts, however, but only with facts ascertained by the competent legal authority,70 there is no absolute difference between the conceptions of "void" and "voidable." There may, on the other hand, well be a relative difference. Only research into positive international law can answer these questions: Is annulment of a treaty retroactive? Can a treaty be attacked as voidable by both or only by one party, or also by a third state? Can the defects of a treaty be healed by the action of the parties? Can such treaty be confirmed? Must the reasons of invalidity be pleaded by a party or can they be taken into consideration by an international court ex officio?

Generally speaking, cases of treaties void ab initio are rare under present day international law. As to voidable treaties, only the aggrieved party has a right to attain the international court ex officio. The annulment of treaties has retroactive effect. The legal effect of termination is always ex nunc.

With regard to the validity and the termination of treaty-created norms the problem of the divisibility of treaties has arisen. Of course, a treaty may stipulate that it constitutes an indivisible whole, 11 But where treaties consist of different parts, dealing with completely different subject-matters, it is now recognized by the majority of writers, by the treaties themselves,

Montreux Convention of July 20, 1936, concerning the Regime of the Straits, without the participation of Italy, party to the Lausanne Convention 1923 (but Italy acceded to the 1936 Convention in 1938). See also the Dissenting Opinion of Judge Negolescu in *Publs*. of the P.C.I.J., Ser. B., No. 14, pp. 73, 129, and the Separate Opinions of Judges van Eysinga and Schücking in the Chinn Case (Ser. A/B, No. 63, p. 131, pp. 148–150).

⁵⁸ Covenant, Art. XX.

⁶⁹ See the language of President Hurst in the Chinn Case, as cited, pp. 122-123.

¹⁰ This idea has now become pivotal in the system of Kelsen but see also Scelle: "Il existe un instant entre le moment ou la nullité est alleguée et celui où elle est constatée par l'autorité compétente", Précis de Droit des Gens. Vol. II, Paris, 1934, p. 419.

⁷¹ Thus Art. 65 of the unratified London Declaration of 1909.

by international tribunals, and by the practice of states, that the problem of the validity or termination of treaty-created norms can arise not only with regard to the treaty as a whole, but also with regard to certain parts or articles of the treaty.

So far we have discussed the theoretical problems of the rules of international law as to the validity and termination of the validity of treaty-created norms. Now we come to the important distinction between these general, abstract norms and their application to a single concrete case. In such concrete cases a conflict may arise between the states in question either over the facts, or over the law, or over both. It is one problem to determine the abstract, general norm according to which the occurrence of a resolutive condition, stipulated in the treaty, brings the treaty to an end. It is a different problem to ascertain whether in a concrete case this resolutive condition has arisen in fact.

The problem of the difference between the abstract, general norms as to the validity and termination of treaties and the conflicts between states as to their application to a concrete case is often not seen, or, if seen, is restricted to the cancellation of a treaty on account of breach by the other party and the clausula rebus sic stantibus. But it must be emphasized that such a conflict can and does arise with regard to any condition of the treaty's validity, and with regard to any condition of the termination of treaty-created norms.

In an advanced municipal legal order such conflicts are peacefully decided with authentic and final legal authority by centralized, special, organs for the application of the law, organs different from the parties in conflict: impartial and independent courts, having compulsory jurisdiction. The task of the court is to ascertain the facts with authority, to ascertain the law, to apply the law as ascertained, to the facts as ascertained, to order the application and execution of the sanction prescribed by the law.

If states are in conflict in a concrete case, as to the facts or the law, concerning the validity or termination of treaty norms, we are in the presence of an international conflict which, like any other international conflict, must be settled in accordance with the norms of general international law and of the particular international law binding upon the parties. The treaty may itself contain norms of procedure for the settlement of such conflicts, as in the case of the Locarno Treaty. The parties may be bound by the League Covenant or by a conciliation treaty. There may exist between them a treaty of obligatory arbitration or judicial settlement for these types of conflict. Then the parties are bound to follow this procedure, and a juridical solution is possible.

But where no such particular international law exists between the parties, only general international law can be applied. And even where such particular law exists we may, in the last analysis, be thrown back on general international law; for a conflict may arise as to the meaning or interpretation of

this particular treaty law or a party may become guilty of a breach of this particular treaty law.

As to the solutions of conflicts concerning the validity or termination of treaties, under general international law, the juristic literature gives two opposite answers: the one, put forward, e.g., recently by Vitta, 22 says that withdrawal from a treaty, even if there is a conflict between the parties as to its validity or continued validity, is legally possible only with the consent of all the contracting parties; the other, put forward, recently by Verdross, 23 gives the aggrieved party under general international law a right to decide the conflict itself.

In order to come to a correct understanding of this problem it must be borne in mind that present-day general international law, as a primitive legal order, lacks special organs for the application of general, abstract norms to concrete cases, and that, under general international law, the states themselves are the organs left to apply the law. It is for them, judges and parties in the same person, to ascertain the law and the facts, to apply the law as ascertained to the facts as ascertained, to order and execute the sanction; which, as in all primitive laws, takes the form of self-help: reprisals and war. As in all primitive laws, a peaceful juridical solution of the conflict is only possible by the agreement of the parties.74 If no such agreement can be reached—and it will, of course, for political reasons often be impossible to reach such agreement,—each party is entitled to ascertain the law and facts itself, to act accordingly, to apply reprisals and so on. But, on the other hand, neither the unilateral pretention of the one, nor the unilateral denial of the other party, can furnish an objective and impartial decision of the conflict.

The conclusion of this theoretical investigation is that, under present day primitive and technically very imperfect general international law, conflicts between states as to the validity and termination of treaties cannot be settled juridically in a peaceful way, ⁷⁵ where no agreement between the parties can be reached, and leads to the inescapable conclusion that the first and most

¹⁴ D. Anzilotti, Corso di Diritto Internazionale, Vol. III, 1st part. Rome, 1915, p. 8: Poichè non esiste un potere superiore agli Stati, le loro controversie non hanno che un modo di resoluzione, consistente nell'accordo degli Stati medesimi.

Thus clearly Oppenheim, although limited to the clausula rebus sic stantibus: "If such abrogation be refused, a conflict arises between the treaty obligations and the right to be released from them, which, in absence of an international Court that could give judgment in the matter, cannot be settled juridically" (International Law, London, 1928 (4th ed.; McNair), Vol. I, p. 751). See also G. del Vecchio, "The old illusion that the maxim pacta sunt servanda, independently of any jurisdiction which ascertains the subjective and objective requisites of the validity of a contract, is sufficient to regulate the relations between states, is vanishing from the field of international law" (Pol. Sci. Quar. Vol. L (1935), p. 529). In the same sense Kelsen and Verzijl, as cited. For an excellent treatment of the whole problem see G. Balladore Pallieri, Diritto Internazionale Pubblico, Milan, 1938 (2nd. ed.), pp. 312–313.

important step on the road of progress toward international law and order must be the introduction into general international law of compulsory international courts. As long as this progress is not realized the whole problem of the validity and termination of treaties must remain, of necessity, in an entirely unsatisfactory condition and a condition which cannot be remedied by the science of international law. But as the same is true with regard to general international law as a whole the result of this theoretical investigation of a limited problem leads to a postulate of extreme importance today: If we are really bent on bettering international relations, our task is to transform present-day primitive general international law into a more advanced legal order and the first and most important step is the establishment in general international law of international courts, having compulsory jurisdiction over all international conflicts, in which states are in conflict as to the positive law.

VI .

Pacta sunt servanda means the institution, by general international law, of a special procedure—the treaty procedure—for the creation of international norms. Norms, thus created, are valid and must be kept, as long as no norm-abolishing fact, as laid down by norms of international law, has occurred. Pacta sunt servanda, in consequence, and contrary to the opinion of many writers, admits no exceptions. The problems of the norm pacta sunt servanda are exclusively problems of positive law. The revision of treaties, 76 on the other hand, presupposes necessarily valid treaties, and brings up the purely political problem of a change or termination of valid treaty norms, recognized as valid in positive law by the conflicting parties, for metajuridical reasons. Valid treaty norms must be kept, but they can, by appropriate procedures, be revised. Pacta sunt servanda means the inviolability, not the unchangeability, of treaties. The revision of treaties is neither an exception to, nor in contradiction with, the norm pacta sunt servanda. Pacta sunt servanda belongs to the domain of positive law, the lex lata, revision to politics of law, the lex ferenda; the first deals with questions as to what the law is, the second with questions as to what the law should be; the first is a problem for the judge, the second for the legislator.

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¹⁶ Kunz, The problem of revision in international law, this Journal, Vol. XXXIII (1939), pp. 40-43.

GERMAN PRISONERS OF WAR IN THE UNITED STATES

By John Brown Mason *

For the first time in over one hundred years the American public has large numbers of foreign prisoners of war in its midst. While German naval prisoners were held in the United States during the last World War they numbered only a few thousand men, as compared with the total today of over three hundred thousand Germans, with additional numbers still pouring into our ports. The task of housing and feeding these prisoners, of providing for their other needs as well as of guarding them and putting them to work at productive labor, has been the responsibility of the War Department. With few precedents and practically no experience to fall back upon, it has done and is doing an enormous job with results that, as a whole, are a credit to the good name of the United States.

It is also the first time that the United States has had occasion to apply the provisions of the two conventions signed at Geneva on July 27, 1929, "Relative to the Treatment of Prisoners of War" and "For the Amelioration of the Condition of the Wounded and the Sick of Armies in the Field," respectively, a fact which is of special interest to students of international law. Although both conventions are based upon drafts submitted by the International Red Cross Committee, it is worth recalling that the movement for better conditions for prisoners of war is closely connected with the history of this country. In 1785 the United States signed a Treaty of Friendship with Prussia, which was probably the first to stipulate proper treatment for prisoners of war. It prohibited their confinement in prisons as well as the use of irons, and provided that they be held in a healthy place, be allowed

^{*}Foreign Economic Administration, formerly of the Internees Section, Special War Problems Division, Department of State. Opinions expressed in this article are not to be construed as reflecting the views of the Department of State or any other government agency.

¹ In addition, 50,570 Italian and 2,828 Japanese prisoners of war were held in the United States on February 15, 1945.

² 47 Statutes at Large, pp. 2021–2066 and 2074–2101 (Treaty Series Nos. 846 and 847); this JOURNAL, Vol. 27 (1933), Supplement, pp. 43–86. In line with the current usage of the War Department these conventions are referred to in this article as the "Geneva Convention" and the "Red Cross Convention," respectively. Attention is called to the fact that publicists have often applied the term Geneva Convention to what the Army calls the Red Cross Convention.

³ L. Oppenheim, International Law, London, 1940 (6th ed., by H. Lauterpacht), Vol. II, p. 293; William E. S. Flory, Prisoners of War: A Study in the Development of International Law, Washington, 1942, p. 23.

⁴ Eleanor C. Flynn, "The Geneva Convention on Treatment of Prisoners of War," in George Washington Law Review, Vol. II (1943), pp. 505-506.

⁵ 8 U. S. Stat. 84, 96 (1785).

exercise and be kept and fed as troops. In 1863 the United States War Department issued the famous General Order No. 100, Instructions for the Government of Armies of the United States in the Field, one of the classic documents of the law of war, compiled by Francis Lieber, refugee from Germany and at the time a professor of Political Science at Columbia College. They probably constituted the first comprehensive codification of international law relating to prisoners of war issued by any government.

THE ROLE OF THE STATE DEPARTMENT

The Geneva Convention assigns certain rights and obligations to the detaining Power, to the protecting Power, and to the captives themselves. The War Department is directly charged with the custody of all enemy prisoners of war, including those captured by the Navy. The responsibility of liaison with the neutral powers which protect the interests of enemy nationals lies with the State Department. It appears worthwhile, therefore, to describe briefly the functions of the State and War Departments and the close relationship between the two in the application of the terms of the two 1929 Conventions to enemy prisoners of war.

The large amount of work falling to the State Department in this connection necessitated the establishment of an Internees Section ⁸ in the Special War Problems Division of the State Department in January, 1942. It deals particularly with the Department's responsibilities concerning enemy prisoners of war and civilian internees ⁹ held in this country, as well as with American prisoners and civilian internees in enemy and enemy-occupied territories. It maintains close liaison with the Office of Censorship, the Post Office Department, the Department of Justice, and the Navy and War Departments, especially the Personnel Division, War Department General Staff, and the Office of the Provost Marshal General. The Section is, of course, in continuous contact with the Swiss Legation as the protecting

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⁶ See Oppenheim, work cited, pp. 291-94, for a brief story of the changing conditions of prisoners of war from antiquity to our time. Flory, work cited, pp. 7-15, details the changing concepts of international law applying to prisoners of war during the same period.

⁷ Flory, work cited, p. 18.

³ Since its early days it has been headed by Mr. Bernard Gufler, a Foreign Service Officer who, until 1941, was stationed at the American Embassy in Berlin where he was in charge of the inspection of the prisoner of war camps for British soldiers in Germany while the United States served as a protecting Power.

For the background and the various aspects of the work of the Internees Section, see Graham H. Stuart, "Special War Problems Division," in *Department of State Bulletin*, Vol. XI, No. 264 (July 16, 1944), pp. 63–74. As Consultant in the Division of Research and Publication of the State Department, Dr. Stuart wrote a detailed history and analysis of the work of the Special War Problems Division which constitutes the basis for the above mentioned article and others under the same heading in the *Department of State Bulletin* of July 2 and 30 and August 6 and 20, 1944.

[°] R. R. Wilson, "Recent Developments in the Treatment of Civilian Alien Enemies," in this JOURNAL, Vol. 38 (1944), pp. 397-406.

Power for German prisoners in this country, and it maintains connections with the American Red Cross and the International Red Cross Committee and the War Prisoners' Aid of the International Y.M.C.A.¹⁰ Matters of policy are laid before the Interdepartmental Board on Prisoners of War on which the Departments of State, War, Navy, and Justice are represented. Members of the staff of the Internees Section are present at all of its meetings. From time to time discussions are held with representatives of the British and Canadian Embassies.

Officers of the Internees Section accompany the representatives of the Swiss Legation, Division of Foreign Interests, on their periodical visits to and inspections of prisoner of war camps. 11 This is done as a matter of courtesy to the representatives of the protecting Power 12 and for the purpose of facilitating the solution of problems on the spot as much as possible. At the same time these visits serve to keep the Department informed of conditions in prisoner of war camps. It is to be remembered that prisoner problems affecting hundreds of thousands of men and our relations with other states cannot be treated satisfactorily from the seclusive atmosphere of a The extended knowledge of the various problems of life behind the barbed-wire gained by the personal and repeated experience of all officers of the Section through direct contacts with the American camp commanders, the officers and men of the guard personnel, as well as with the captives themselves, serves to provide Section officers with an invaluable knowledge of camp problems.13 Reports on these visits are prepared by the officers of the Internees Section on their return. Copies of the camp reports are made available to the War Department, which gains from them a certain insight into camp problems as seen by two civilian observers, one Swiss and one American.14

As officers of the Section visiting a prisoner of war camp must be prepared to make occasional recommendations of their own regarding the application and interpretation of the Geneva Convention, it is essential that they be men of experience and judgment.¹⁵ An average of two or three, and at times

¹⁰ See Stuart, work cited, pp. 66–67, 74. The Spanish and Swedish Legations, respectively, are concerned with the interests of the Japanese prisoners and internees in the United States (Sweden in the Hawaiian Islands where there are no Spanish consular offices). Sweden also acts as the protecting Power for Finnish internees of whom there are very few.—Representatives of the Vatican are allowed to enter prisoner of war camps for spiritual purposes.

¹³ The Swiss representatives may interview prisoners without witnesses; in accordance with the Geneva Prisoners of War Convention, Art. 86.

¹² In Germany representatives of the protecting Power are accompanied on their camp visits by German Army officers.

of American Army officers rather than of the Swiss representatives. Details not contained in Dr. Stuart's article as well as all comments are based upon the writer's experience in the Internees Section and on his trips to numerous prisoner of war camps.

¹⁴ Stuart, work cited, pp. 67-70.

¹⁵ Stuart, work cited, pp. 67-70; also his "War Prisoners and Internees in the United

even four, officers of the Section are continually on the road. Upon their return the camp experience of these officers is applied to the drafting of correspondence to the protecting Power concerning protests, recommendations or inquiries by the Swiss Legation or complaints, requests or inquiries by the prisoner of war Spokesmen. Visiting camps also helps the Section officers to appreciate more fully the problems of American prisoners of war in German hands—a field in which some of them specialize—and thus contributes to the furtherance of the welfare of our own men in enemy custody. The camp reports further serve as the basis of recommendations which the Section may wish to submit to the Department of State, to the War Department or to the Interdepartmental Board on Prisoners of War for possible action in fulfilment of obligations under the Geneva Convention or in the exercise of rights granted by it to the detaining Power.

Memoranda or notes from the Swiss Legation dealing with conditions found in camps by their visiting representatives or with matters brought to their attention in letters from prisoner of war camp Spokesmen, are addressed to the State Department. From there they are forwarded by the Internees Section to the Office of the Provost Marshal General, with the request that the State Department be informed of the views of the War Department with regard to the matter in question in order that an appropriate reply may be made to the Swiss Legation. Pertinent observations or references to past correspondence, policies, decisions or other action may be joined with the In regard to matters of special or general importance, the State Department may add a statement of explanation of its own views or pro-When, for instance, the Swiss Legation passed on and supported requests of camp Spokesmen for the assignment of captive ministers and priests other than Army Chaplains 16 as religious guides for the prisoners of war, the Department of State pointed out the relative frequency of these requests and the desirability of a methodical distribution of these captive religious leaders among the many camps. In the past they had been distributed very unevenly, with the result that on occasion eight to ten and even twenty captive priests or ministers would be unutilized in one camp while many other camps would be without religious assistance. The Secretary of War fully and quickly cooperated in this matter and laid down a corresponding policy with results beneficial to the many prisoners desiring religious guidance as well as to the morale of camps and the reputation of the United States as a proponent of religious freedom.

States," in American Foreign Service Journal, Vol. XXI, No. 10 (October, 1944), pp. 531, 568. The Section officers visiting camps include a retired United States Minister and former Inspecting Consul General and a Foreign Service Officer, Class II (prior to his assignment to the staff of the European Advisory Commission).

¹⁶ As the German Army provides only one chaplain for each division, as against between one and three for an American regiment, the number of captured chaplains is extremely small. Germany does not exempt ministers and priests from the draft but uses them, ordinarily as sanitary personnel; some, however, are captured as front-line fighters.

The replies received from the Secretary of War or, ordinarily, from the Office of the Provost Marshal General, are forwarded by the Internees Section to the Swiss Legation.

The Swiss Legation may write to camp Spokesmen in answer to their complaints, requests or inquiries. From time to time it sends out circular letters to all camp Spokesmen dealing with matters of general importance such as voluntary labor by non-commissioned officers, regulations concerning pay of prisoners of war, questions affecting protected personnel, information to be furnished in writing to the visiting Swiss representatives, delays in the forwarding of mail after D-Day.

Camp Spokesmen have the right to make complaints and requests to Camp Commanders and the protecting Power regarding the conditions of their in-Their correspondence reaches the protecting Power through various channels, such as the respective Camp Commanders, the Office of the Provost Marshal General, and the Internees Section of the State Department. Under Article 42 of the Geneva Convention complaints by the Spokesmen have to be forwarded immediately by the Camp Commander. The Camp Commander's comments, if any, are forwarded together with the Spokesman's letter through the above channels.¹⁷ The correspondence with the Swiss Legation may refer to complaints, but more often it deals with applications for the so-called Afrika bonus, proxy marriages, divorces, acknowledgments of paternity, requests for validification of promotions on the battlefield just before capture, recognition as protected personnel, powers of attorney, wills, and other documents addressed to the German authorities. They may address to the Swiss authorities requests for information about missing relatives.18

THE TREATMENT OF ENEMY PRISONERS OF WAR

While it is too early to describe all specific aspects of the task imposed upon the United States as a detaining Power a general picture of the prisoner of war situation in this country can be given.

The German prisoners began arriving in the United States in large numbers in the late spring of 1943 after the Allied victories in Africa, and they poured into the country in a steady stream after the invasion of France. The members of the proud Afrikakorps are therefore the veterans among German "PW's" 19 (as they are generally referred to briefly after the big letters stamped on their clothing to make escapes more difficult). Picked for physical and soldierly qualities, and having the reputation of possessing strong National Socialistic sentiments, 20 their average age even

¹⁷ The provisions of the Convention are amplified by War Department regulations.

¹⁸ For instance, as the result of the bombing of German cities.

¹⁹ Some German prisoners declare that the letters "PW" stand for "pensionriete Wehrmacht."

²⁰ However, the Afrikakorps includes the 999th Division which consisted of inmates of

today is only twenty-three years—a sharp contrast to the age range of sixteen (or less) to sixty-nine years of age which the writer has noted among the arrivals from France and Belgium. However, many excellent physical specimens are still found among the prisoners taken recently.

The number of German prisoners of war in American custody in the continental United States on February 15, 1945 was as follows: officers, 12,619; non-commissioned officers, 67,154; enlisted men, 226,413.

This number includes some thirty generals and two or three admirals.²¹ The Geneva Convention provides that prisoners of war be humanely treated and protected, particularly against acts of violence, insults, and public curiosity (Article 2). The general public is, therefore, not allowed access to prisoner of war camps or association with the prisoners in the places where they work—usually outside of the camps, such as factories, canneries, laundries, and farms. American guard personnel has received pertinent instructions to that effect.

Measures of reprisals against prisoners are prohibited (Article 2), and none have been applied by the United States. Upon questioning, every prisoner of war is bound to give his true name and rank, or else his regimental number. In American custody he is given a serial number, photographed, and fingerprinted. Careful personnel records are kept. No coercion may be used on him to secure information relative to the condition of his army or country. Prisoners who refuse to answer may not be threatened, insulted or exposed to unpleasant or disadvantageous treatment of any kind (Article 5). In American practice, the prisoners are questioned at special interrogation centers. Practically no complaint has been made by the prisoners to the Swiss Legation about the treatment in these transient centers.

Foreign money thus taken away from a prisoner is receipted for and is held in custody by the military authorities to the account of each prisoner. United States currency is deposited in the prisoner's trust fund account. Identification documents, insignia of rank, and decorations are retained by or returned to the prisoners (Article 6) who exhibit them freely whenever they wear their uniforms.

Belligerents are bound to notify each other of the capture of prisoners within the shortest period possible, providing through the intermediary of information bureaus the names and the serial numbers of each prisoner and the official address to which the correspondence of the families may be sent (Articles 8 and 77). The United States has established for this purpose the Enemy Prisoner of War Information Bureau in the War Department, which is a division of the office of the Provost Marshal General.

concentration camps, with a sprinkling of criminal convicts added in an attempt to discredit the members of the division. It was commanded by "reliable" officers and non-commissioned officers.

²¹ Among them Colonel General (a four-star general) Jürgen von Arnim, German Commander-in-Chief in Tunisia; *The New York Times*, July 11, 1944.

As soon as possible every prisoner must be enabled to correspond with his family (Article 8). It is provided that each belligerent shall periodically determine the number of letters and postal cards per month which prisoners of war in its possession are allowed to send (Article 36). German prisoners in American custody are allowed to write letters and post cards as follows: General officers, five letters and five cards a month; other officers, three letters and four cards a month; and enlisted men, two letters and four cards a month. The length of letters and cards is restricted; they must be written on special forms. Mail may not be delayed or detained for disciplinary reasons (Article 36). Letters may therefore be written and received even when prisoners are confined in a guard house.

Prisoners of war are allowed individually to receive parcels containing food and certain other articles (Article 37). German prisoners may therefore receive such packages from members of their families or from the German Red Cross. In many camps the prisoners have asked the German Red Cross through the Swiss representatives to keep food and tobacco in Germany because they are not needed by prisoners held in this country. American regulations allow every prisoner one cable or telegram during his internment, in addition to any called for by deaths or serious illness.

Letters and presents are exempt from all postal, import, and other duties. In cases of acknowledged urgency, prisoners are allowed to send telegrams, paying the usual charges (Article 38). Prisoners, for instance, may send telegrams home through the American Red Cross when they have not received any mail from their families for a period of three months or more.

Prisoners are allowed to receive shipments of books individually as well as collectively for the library of prisoners' camps. These books are subject to censorship (Article 39). They are sent to the prisoners by members of their families or, in the case of camp libraries, by the German Red Cross and by the War Prisoners' Aid of the International Y.M.C.A. They may also be sent to prisoners of war by relatives resident in the United States, or they may be purchased by the prisoners individually, or collectively for the camp libraries. In all cases books sent by private persons have to be shipped directly from the publishing house to the prisoners or the prisoners' camp library. Current newspapers and magazines of wide circulation published in the English language in continental United States are available to the prisoners, by subscription, foreign language newspapers upon approval by the Provost Marshal General. A number of copies of *The New York Times* are found in every camp, as well as local papers. German language newspapers are less in demand.

Censorship of correspondence must be effected within the shortest possible time (Article 40). In the case of the United States foreign and domestic correspondence is subject to censorship by the Office of Censorship, with certain exceptions, and to examination by military authorities.

Prisoners of war are housed in base camps established in permanence and

in branch camps which are either permanent or temporary and which ordinarily are under the supervision of the base camp. On February 15, 1945, there were 130 base camps and 295 branch camps for German prisoners in continental United States. An additional number of prisoners of war were in hospitals and others in penal institutions.

Most of the early camps were established in the south and southwest states to take advantage of low construction and operating costs due to the milder climate and other conditions. As the need for utilizing prisoner of war labor increased, more camps were established in the northern states until now February 15, 1945, camps are found in all states except Nevada, North Dakota, Rhode Island, Montana, and Vermont. More than half of the camps have been established at Army posts, camps, and stations where as many as three-fourths of the prisoners have been employed 22 in bakeries, officers' messes and laundries, building roads and buildings and general cleaning work. The remainder were engaged in private contract work, mostly on farms. For reasons of security a number of early camps were established in rather isolated areas. As the military authorities gained experience in the handling of prisoners of war, and as the manpower shortage became more and more pressing, work projects for prisoners assumed increasing importance. New camps are, therefore, often located near and even close to centers of population, depending on manpower needs.

The responsibility for the establishment and operation of camps lies in the hands of the nine regional Service Commands, 23 in accordance with broad

2 Major Maxwell S. MacKnight (of the Prisoner of War Division, Office of the Provost Marshal General), "The Employment of Prisoners of War in the United States," in International Labour Review, Vol. 50, No. 1 (July, 1944), p. 49.

The control of the camp is somewhat diffused. Personnel Division, War Department, General Staff, is charged with the determination of broad, basic plans and policies concerning prisoners. In accordance with them, the Commanding General, Army Service Forces, is charged with all matters pertaining to enemy prisoners in continental United States including their custody, control, utilization, location, care, treatment, repatriation, and security: Included among these responsibilities are:

- a. Supervision and execution of War Department policies to make effective the provisions of the Geneva Convention.
- b. The discharge of the War Department's responsibility in the supervision and ad-
- ministration of arrangements between belligerent powers with reference to prisoners.

 c. The supervision and administration of all matters affecting prisoners arising under arrangements or dealings with neutral powers or agencies, including the Central Agency for Information in neutral countries, and the protecting Powers.
- d. Formulating the necessary rules and regulations relative to the War Department's responsibility in the control of prisoners.
- e. Coordination of policies and procedures concerning prisoners with other Federal agencies.
- f. Establishment and operation of the Prisoner of War Information Bureau and the Enemy Alien Information Bureau.

The Provost Marshal General functions as the staff agency of the Commanding General, Army Service Forces, and carries out his responsibility in matters pertaining to prisoners. Under the supervision of the Commanding General, Army Service Forces, the Commanding General of each service command is responsible for all matters pertaining to prisoners within

policies laid down by the War Department. While this decentralization of authority allows a certain flexibility in furnishing labor where it is needed most, it also results in a lack of uniformity in those standards of camp management which are not prescribed by the Geneva Convention.

The capacity of camps ranges from 150 to 7,000 prisoners; the average is around 2,500. The actual number of prisoners in a given camp is dependent in part on the season of the year, as men may be transferred at any time to outlying branch camps located near canneries, saw mills, cotton crops, and so on.

In general the Geneva Convention prescribes that prisoners of war shall be lodged in buildings or barracks affording certain guarantees of hygiene and healthfulness. They must be fully protected from dampness and sufficiently heated and lighted. The total surface, minimum cubic amount of air and the arrangement and material of bedding in these dormitories shall be the same as for the troops at base camps of the detaining Power (Article 10). In American practice prisoner of war camps are located, whenever possible, where existing military installations—including housing, land, and service—may be utilized. Use is also made of Federal Government camps, including those formerly belonging to the Civilian Conservation Corps, the National Youth Administration, the Farm Security Administration, and other governmental agencies, including state and local fair grounds and buildings, armories, schools, and auditoriums. In some instances privately owned facilities are converted to house prisoners of war.

Prisoner of war camps which are entirely new establishments follow a standard layout plan, which has been described as follows:

The basic feature of the plan is the compound. A camp consists of one or more compounds surrounded by two ²⁴ wire fences. Compounds are separated from each other by a single fence. Each compound houses four companies of prisoners or approximately 1,000 prisoners. The housing and messing facilities are equivalent to those furnished to United States troops at base camps, as required by the Geneva Convention. These facilities consist of five barracks, a latrine containing showers and laundry tubs with unlimited hot and cold running water, a mess hall, and an administrative building for each company. In addition, each compound is provided with a recreation building, an infirmary, a workshop, a canteen building, and an administration building. The compound area is sufficient to provide outdoor recreation space. Each camp also has a chapel, a station hospital, and a large

the geographic limits of his service command. Post commanders under the jurisdiction of the service commander are responsible for the utilization and employment of prisoners, for the maintenance, operation, administration, management of the prisoner of war camp, and for the control and treatment of the prisoners in his care. Each camp commander, in turn, under the jurisdiction of the post commander, if any, and the service commander, commands the prisoner of war camp and is responsible for its maintenance, operation, and so on. See also MacKnight, work cited, p. 49.

²⁴ The newer camps usually have only one wire fence.

outdoor recreation area for the use of all prisoners at the camp. At some camps located on an Army post, certain wards of the post hospital are designated for the use of prisoners of war in lieu of a station hospital at the prisoner of war camp. 25

Camps which are based on existing housing must meet certain minimum standards, including provisions for laundry tubs, indoor and outdoor recreation space, post exchange space, infirmary, hospital and chapel facilities, sufficient heat and light for buildings or tents, adequate drainage, and a water supply, including hot water in sufficient quantity. Prisoner of war labor is utilized to the fullest possible extent in the construction of new camps and the conversion of existing housing. Prisoners prepare the sites, including roads and fences, and do the other labor necessary to set up the camps.²⁶

Officer prisoners are generally held in special officer camps with a capacity ranging from 800 to 3,000 prisoners, including privates and non-commissioned officers. Officers are further allowed a certain number of orderlies from among the enlisted prisoners of war of the same nationality. Their quarters are housing accommodations consistent with their rank. Normally, higher ranking officers have their own bedrooms and share a living room with one or more fellow officers. Field officers (major and up) have individual living rooms. The captive generals live in individual hutments of a standard type provided for American generals in cantonment. Each general has an adjutant.

These standards are maintained in accordance with the provision that officers and persons of equivalent status (such as administrative officers) shall be treated with regard due their rank and age (Article 21). Officer prisoners receive from the detaining Power the same pay as officers of corresponding rank in the armies of that Power, on condition, however, that this pay does not exceed that to which they are entitled in their own army (Article 23). In the absence of an agreement between Germany and the United States in execution of this provision, German officer prisoners receive payments ranging from \$20.00 (lieutenants) to \$30.00 (captains) and \$40.00 (majors and officers of higher rank) per month.

The food ration of prisoners of war must be equal in quantity and quality to that of the troops of the detaining Power at base camps (Article 11). Prisoners, including officers, therefore, receive rations equal in quantity and quality to those of American troops. Because of differences in national dietary habits, German prisoners of war are often allowed extra amounts of potatoes as well as rye flour for the baking of dark bread in exchange for other food issued to American soldiers which they dislike, such as corn and sweet potatoes provided that the monetary value of the substituted food does not exceed that of the original ration. Care is taken that the nutritional content of the food rations remains the same even if the prisoners

explain on occasion that they are more interested in potatoes than in calories. Where food is furnished by private contractors Army standards of quantity and quality are required.²⁸ The canteens established in each prisoner of war camp sell candy, tobacco, crackers, soft drinks, and other food products as approved by the Camp Commander, also beer of 3.2 percent alcoholic content in limited quantity and fruit when available. The prisoners prepare their own food in accordance with their tastes and preferences. All collective disciplinary measures affecting food are prohibited under Article 11.

Clothing, linen and footwear are to be furnished to a necessary minimum by the detaining Power which also has to provide for regular replacements; prisoners normally make their own repairs. Prisoners receive special work clothes wherever the nature of the work requires it (Article 12), such as rubber boots for work in rice swamps or on revetments, hard toed shoes, goggles, gloves, and the like. Prisoners of war are issued renovated army clothing as their uniforms wear out or when other circumstances, including climate, require it. German uniforms are not marked but other outer clothing is stamped "PW" in big black letters. Officer prisoners of war may order new uniforms at their own expense from American commercial firms.

In addition to food, camp canteens sell ordinary objects at the local market price (Article 12), provided such articles are on the approved list. Scarce materials and products are not sold. Profits made by these canteens are used for the benefit of the prisoners (Article 12) such as the purchase of sports and recreational articles, furniture and draperies for day rooms, theatrical and musical supplies, books for the camp library, and the like.²⁹

HEALTH AND MEDICAL CARE

Belligerents are bound to take all sanitary measures necessary to assure the cleanliness and healthfulness of camps (Article 13). Their type of construction is equivalent to that provided for United States troops at base camps.

The detaining Power is required to furnish free all necessary medical and hospital treatment (Article 14). The prisoners, therefore, get the same medical and surgical treatment accorded to American Army personnel. By agreement with Germany, the United States may retain so-called "protected personnel" (enemy) as described in Articles 9, 10 and 11 of the Red Cross Convention, including doctors, dentists, army nurses, sanitary personnel, chaplains, and so on, who have been certified by United States military authority. This protected personnel is not treated as prisoners of war but in the interest of national security and for the purpose of their utilization in the camps in the care, treatment, and spiritual welfare of their own nationals, this protected personnel is housed in prisoner of war camps until

repatriated. They are accorded treatment no less favorable than prisoners of war of equivalent rank. In addition, they are allowed weekly walks on parole outside camps in the company of American guard personnel, and their clothing is marked PP instead of PW. By reciprocal agreement between the United States and Germany, we may retain as protected personnel one Chaplain and two German physicians, one dentist and six sanitary personnel for each 1,000 prisoners of war.

In addition to captured German medical and sanitary personnel, American Army physicians and nurses are provided for the care of prisoners of war to the necessary extent. An American Army doctor is always in charge of the camp medical and hospital facilities.

Medical inspections of prisoners take place at least once a month for the purpose of the supervision of the general state of health and cleanliness and the detection of contagious diseases (Article 15). Sick call is held daily, and dental surveys are made periodically.

RELIGION, EDUCATION, AND RECREATION

Prisoners enjoy complete liberty in the exercise of their religion, including attendance at the services of their faith (Article 16) held within the camps. Their religious needs are ministered to by captured Army chaplains and by captive ministers and priests who were drafted into the German Army and who served as sanitary personnel or even as front-line soldiers. In camps where German captive priests or ministers are not available American Army chaplains and civilian ministers and priests (preferably with a knowledge of German) may be used to minister to their religious needs. American Army chaplains exercise supervision over all religious activities in the camps.

As far as possible belligerents are required to encourage intellectual diversions and sports organized by prisoners of war (Article 17). therefore, allowed to set up educational programs of various types under the supervision of the camp authorities. They are allowed to subscribe to newspapers and periodicals of wide circulation published in continental United States in the English and German languages, except for a few in German whose circulation has not been permitted. They are checked by Prisoners may purchase radios provided they are not equipped for short-wave reception. All radios are inspected frequently to check this. In all camps the prisoners have organized sports, especially soccer; sufficient space is provided for their outdoor and indoor recreation. A certain amount of furnishings for prisoner recreation buildings is provided by the Army and welfare agencies; also equipment for indoor games and outdoor sports, handicraft tools, fine arts and theatrical accourrements. They are allowed to receive as gifts or to purchase athletic supplies and books through the War Prisoners' Aid of the International Y.M.C.A. They also receive many books—text books as well as fiction—from the German Red Cross,

subject, of course, to American censorship. They may attend motion pictures.³⁰

Prisoners must salute all officers of the detaining Power; officer prisoners are bound to salute only American officers of higher or equal rank (Article 18). Prisoners are allowed to wear insignia of rank and decorations (Article 19). The official salute of the German Army is now the so-called "German salute" (raising the right arm to the height of the eye whether the head is covered or not but without the words "Heil Hitler"). Quite a number of German prisoners continue to use the old military form of the salute.

Regulations, orders, notices, and proclamations of every kind must be communicated to prisoners in a language which they understand (Article 20). Interpreters who are members of the American armed forces are, therefore, attached to each camp. In addition, each spokesman may have his own interpreter from among his fellow prisoners.³¹

In case of transfer from one camp to another, prisoners must be officially notified of their new destination in advance (Article 26).

LABOR OF PRISONERS

Belligerents may utilize the labor of able prisoners of war according to their rank and aptitude, officers and persons of equal status excepted (Article 27). No prisoner of war may be employed at labor for which he is physically unfit (Article 29) or at unhealthful or dangerous work (Article 32). They may not be employed for personal services of members of the Army of the United States. Medical officers classify prisoners according to their ability to work as follows: A. Heavy Work; B. Light Work; C. Sick—no work.

Labor of prisoners is divided into two classes, paid and unpaid. The latter includes the labor connected with the administration, management and maintenance of the prisoner of war camp, primarily for the benefit of the prisoners. Examples are: work necessary for the maintenance or repair of the prisoner of war camp compounds, including barracks, roads, walks, sewers, sanitary facilities, water pipes and fences. It includes also labor incidental to improving or providing for the comfort or health of prisoners including work connected with the kitchens, canteens, fuel, garbage disposal, hospital and camp dispensaries and work as cooks, cooks' helpers, tailors, cobblers, barbers, clerks, and other persons connected with the interior economy of the prisoner companies. Paid labor includes all types of labor

²⁰ The International Y.M.C.A. acts as the central agency in this work; the gifts may actually have originated with other organizations, such as the National Catholic Welfare Conference.

The interpreter situation is rendered difficult by the fact that the native language of many men captured in German uniforms is anything but German. The languages of practically all countries occupied by the Wehrmacht are found in prisoner of war camps, including Russian and Arabic. See also (unsigned) "Prisoners of War. Non-Germans Want to Go Back and Fight," Military Police Training Bulletin, Vol. III, No. 1 (January, 1945), p. 37.

which do not fall in the category of unpaid labor. Under certain circumstances cooks and clerks are paid.

Labor furnished by prisoners of war may or rather must have no direct relation with war operations. It is especially prohibited to use prisoners for the manufacture and transportation of arms or munitions of any kind, or for transporting material intended for combatant units (Article 31). According to Major MacKnight the War Department has ruled that:

prisoners of war may be employed in all those occupations which are normally necessary for the feeding, clothing, and sheltering of human beings as such, even though this work may be performed for, or results in benefits to, members of the military establishment, but that prisoners of war may not be employed in work which is solely of value in assisting the conduct of active belligerent operations. Therefore, for example, prisoners may be employed to manufacture trucks and parts thereof, though these may eventually be put to military uses, but they may not be employed to manufacture parts used exclusively for tanks. Also, prisoners may be used in agriculture, food processing, the manufacture of cloth and leather, and the like, though soldiers may consume the crops or wear the clothing and shoes.

When a question arises whether a certain type of labor is prohibited under Article 31, the matter is referred to the Prisoner of War Employment Review Board. This Board has decided, inter alia:

1. Maintenance and repair work is authorized on any vehicle designed for the carriage of cargo or personnel, in contradistinction to vehicles designed as combat weapon carriers.

2. Work on the organic transportation equipment of a unit which has

been alerted for oversea duty is prohibited.

3. Work on the preparation of motor vehicles against hazards incidental to oversea transportation is prohibited.

4. Steam cleaning tanks and their motors is prohibited.

5. Primarily scrapping operations may be performed by prisoners of war on any type of vehicle. Minor incidental salvage does not prohibit this type of employment.

6. Salvage work for the primary purpose of recovering parts for reissue is authorized only on vehicles of a type on which prisoners of

war may do repair or maintenance work (see par. 1).

7. Scrapping operations only are authorized in connection with gun parts, gun mounts, empty ammunition boxes, carbine, or rifle cases.

8. Work in connection with rifle ranges or bayonet courses, or any training aids used for training personnel in the use of combat weapons is prohibited.

9. Work in connection with guns of any kind is prohibited.

10. Work on gas masks is permitted.

Officer prisoners are not required to work. If they request suitable work it is secured for them when available. Some have asked for and have been assigned work on farms.

Non-commissioned officer prisoners of war may only be required to do supervisory work, unless they expressly request a remunerative occupation (Article 27). Non-commissioned officers may make written requests for remunerative labor other than supervisory work for periods of thirty to ninety days. They may limit the type of non-supervisory labor they agree to do to that in which they have a special skill or aptitude. Through the protecting Power, the German High Command has officially informed the German prisoners in the United States that it considers performance of work by non-commissioned officers and officers in the prisoners' own interest as it furthers the maintenance of their physical and mental health.²²

Prisoners are not paid for labor connected with the administration, management and maintenance of prisoner of war camps (Article 34), unless the work requires that they possess special qualifications and devote their full time to it, thus making them unavailable for paid labor. Examples of administrative work for which payment may be made are bookkeeping, accounting, shorthand, plumbing, and so on. Prisoners, including officers and non-commissioned officers, are paid for Class II labor, including supervisory work, at the rate of eighty cents a day.²³ The task system—establishing the daily amount of work to be accomplished—is used whenever possible for the purpose of increasing the productivity of prisoner labor. Payment is made in canteen coupons; at the request of the prisoners, part or all of these payments may be credited to a trust fund account. The pay remaining to the credit of the prisoner must be delivered to him at the end of his captivity (Article 34).

The length of the prisoner's working day, including time for transportation to and from work, must not exceed that allowed for civilian workers in the region employed at the same work. Every prisoner must be allowed a rest of twenty-four consecutive hours every week, preferably on Sunday (Article 30). Prisoners are required to work at least eight hours a day or its equivalent in productivity. The War Department has ruled that travel up to two hours each way may be considered a part of the permissible working day, provided the total length of each working day, including travel time, is not in excess of twelve hours.

In case of injury arising out of and in the course of assigned work, prisoners may be paid by the War Department at the rate of forty cents a day, excluding Sunday. For purposes of disability compensation a prisoner of war engaged in labor for pay is considered an employee of the United States, whether he is engaged on a project sponsored by the United States, a State or subdivision thereof, a municipal or private corporation, or by an individual or individuals.²⁴

When prisoners of war work for private individuals and Government agencies other than the War and Navy Departments, their employment is under

^{*} See MacKnight, p. 55, for further details.

¹³ For instance, physicians employed in the medical care of their fellow prisoners receive this pay in addition to their allowance as officers.

³⁴ See MacKnight, pp. 63-64, for further details.

Requests for the use of prisoner of war labor are channeled through the War Food Administration and the War Manpower Commission working through the county agricultural agents and the United States Employment Service, to the military authorities. These channels are used to eliminate competition between prisoner of war labor and free civilian labor; civilian conditions and practices are adopted as far as possible. Such work projects must be in conformity with the provisions of the Geneva Convention and with security regulations. Prisoners working under contract are paid the regular compensation of eighty cents a day by the War Department, while the employer pays the United States Treasury the sum specified in the contract, amounting to the cost of the labor if it were done by civilians at the wages prevailing in the locality for similar work. The employer agrees in the contract to maintain conditions of employment in conformity with the Geneva Convention and to comply with all directions of the War Department for the correction or improvement of conditions of employment, including those in violation of the Geneva Convention. The War Department provides for regular inspections to insure this compliance. 85

GENERAL

Prisoners are subject to the laws, regulations, and orders in force in the Army of the detaining Power (Article 45); ³⁵ also to the civil laws of the United States and of the state and municipality where interned. War Department regulations prescribe that all military personnel having immediate custody of prisoners will be firm and exact in enforcing military discipline and military courtesy. Regulations affecting the conduct and activities of prisoners are posted conspicuously in a sufficient number of places, in the German language. Prisoners are not to be exposed to cruel or inhumane treatment. They must not suffer any punishment prohibited by the Geneva Convention, nor any type of punishment other than those allowed for personnel of the Army of the United States. No collective punishment may be imposed for the misconduct of an individual. Three weeks before trial, notice of cases to be tried by general or special courts-martial are submitted by the Provost Marshal General to the protecting Power, ³⁷ whose representatives have the right to be present at the trial.

There have been some 100 escapes among over 300,000 prisoners of whom only 8 were still at large on February 15, 1945. This percentage is extremely small, due in part to the firm but fair treatment the prisoners are receiving and also to the facts of geography. Some escapes, of course, are not due to an expectancy of being able to reach Germany, but simply to barbed-wire

^{*} See MacKnight, pp. 59-61; also, same, pp. 57-59, for types of work performed and extent of utilization of prisoner labor.

* See also Articles 46-67.

¹⁷ The general public appears to have a grossly exaggerated idea of the Nazi-criminal aspects of camp life; there have been a total of only 2 murders and not over 10 severe beatings due to political reasons.

psychosis which drives a man away from the camp, if only for twenty-four hours. Most escaped prisoners are retaken or surrender in one or two days. An unpublished number of would-be escapists have met death in the attempt. Upon recapture they are subject to thirty days' confinement in the guard house of which the first fourteen may be on a "restricted diet" of eighteen ounces of bread a day and "all the water they want." Milder punishment may be imposed by the Camp Commander at his discretion.

The custody of German prisoners of war in the United States has gone through two stages and will face a third one in the future. The first period was marked by military preoccupation with the problems of "security" with camps being located in isolated areas, surrounded by barbed-wire fences, and emphasis placed on guards to an extent that was indicative of our lack of experience in handling prisoners of war. During the second stage security loomed less important in the military eye as the nation's increasing need for manpower necessitated an urgent emphasis on labor utilization. New camps were now located in the more populated areas and many branch camps were started wherever labor was particularly needed. more attention was given to camp problems affecting labor productivity, work assignment, instruction, and supervision. Increased attention was also paid to questions of camp morale which affects the quantity and quality of work output and which depends to a large extent on such factors as the efficiency, strictness, and fairness of camp management and the availability of work incentives, such as recreation facilities. Under the present policy of "calculated risk," it is not unusual to see German prisoners of war working inside military posts without military guards, being subject only to periodic counts and inspections. Since this new policy was adopted there has been no alarming increase in attempted escapes and no sabotage of any sort has been attributed to escaped prisoners.

Some time in the future the fortunes of war are likely to result in a decreased demand for prisoner of war labor, at which time the Army will be faced with the problem of handling hundreds of thousands of German prisoners with time weighing heavily on their hands and minds. Their detention until such time as armistice or peace arrangements and shipping facilities make their repatriation possible will affect camp morale and discipline, as well as their outlook on life and their future attitude toward this country. That period will put a task on the military authorities in which American resourcefulness, ingenuity, and awareness of long range implications of the treatment of prisoners of war problems will be taxed to the utmost. the first two periods we have had and are seeing now faithful application of the Geneva Convention by the War Department, both in regard to the letter and the spirit of the treaty. It appears that the War Department is ready to continue the humane treatment of the prisoners in accordance with the provisions of the Geneva Convention after the end of hostilities, an intention worthy of America's good name in the observance of international obligations. Violations of the Convention have occurred, as might be expected, since there was no precedent to guide operation under the Convention. But the War Department has always been ready and anxious to remedy them once they came to its attention. It is believed, in agreement with the expressed policy, of the War Department, that the Army practice of "fair and firm" treatment is the best and most practical method for handling prisoners of war in the United States.

³⁸ Brigadier General Blackshear M. Bryan, Jr., a graduate of West Point, is the Assistant Provost Marshal General in charge of the custody of all prisoners of war; Lt. Colonel M. C. Bernays is in the office of the Assistant Chief of Staff, GI, War Department General Staff.

TRANSFER OF PROPERTY IN ENEMY OCCUPIED TERRITORY

By Jacob Robinson Institute of Jewish Affairs

A. NATURE OF THE PROBLEM

International law was no more prepared for the dynamics of the present war than was the Maginot school of military strategy. International lawyers had given little serious thought to the legal problems which total Consequently, while international arrangements were war would bring. concluded on special questions (e.g. on aerial warfare), the main body of the 1907 Hague Convention, including the section dealing with military occupation, remained unchanged. Military occupation was still conceived of as a temporary phenomenon with limited objectives. But totalitarian warfare as waged by the Axis powers has had unlimited objectives, aimed at nothing less than the complete political and economic subjugation of the occupied In practice the enemy has recognized no restraints of either law or custom save the threat of immediate retaliation. Far from "respecting," unless absolutely prevented, the laws in force in the country," as the Hague regulations require, the Axis has systematically destroyed the political and legal order in the occupied territories. It has substituted quislings in the place of duly constituted local authorities, and has employed them for economic as well as political ends.

An inkling of the changes wrought in the entire property structure of occupied territories may be found in the report issued by the United States Board of Economic Warfare on April 27, 1943, which disclosed that by the end of 1941 the German plunder of Europe had already amounted to \$36,000,000,000. This figure covers only direct acts of confiscation. Furthermore, according to a recent report by the British Ministry of Economic Warfare, up to August 31, 1944, Germany extorted from France, Belgium, Netherlands, Denmark, Norway, Bohemia-Moravia, and Serbia at least 26.4 billion dollars in the form of "occupation costs" and "unpaid for goods." Beyond such acts, the Axis has undermined the whole notion of contractual free will with regard to private business dealings under enemy occupation. For behind the appearance of free will there stood, and still stand, the occupants and quisling officials who recognize no inviolate domain of private property, and who dictate the terms of private commercial transactions.

In the light of these new factors, a reëxamination of the whole subject of property transactions under enemy occupation seems imperative. For practical reasons this analysis must confine itself to transactions in territories under German occupation. For one thing, there is little reliable data con-

cerning the acts of the other Axis powers. For another, it is German occupation which has most seriously disturbed the commercial and financial structure of Europe and the world.

Recognizing some of the new problems arising out of totalitarian methods of warfare and the wholesale re-shuffling of public and private property under Axis occupation, a number of governments-in-exile have tried since 1939 to safeguard legitimate interests by decrees aimed against certain acts committed during occupation. The first attempt toward the formulation of a general policy with regard to property transfers came in the Inter-Allied warning of January 5, 1943, regarding property transfers and dealings in areas under enemy occupation or control.

B. THE HAGUE CONVENTION

Practically all the governments concerned with the present problem are signatories of the Hague Convention.² Neither Germany nor the other Axis powers have thus far formally denounced the Convention or repudiated contractual international law. Consequently the 1907 Hague Convention ³ remains the recognized basis for international order in wartime property relationships.

Articles 42–56 of the Hague regulations deal with both private and state property. According to Article 56, "the property of communes, that of institutions dedicated to religious worship, charity, education, art and science, even when belonging to the state, shall be treated as private property." Article 46 lays down the general principle that private property must be respected by the occupant. Provisions of two types amplify this general doctrine. On the one hand, there is an absolute prohibition on confiscation (Article 46, paragraph 2), on pillage (Article 47), and on general penalties against the local population (Article 50). On the other hand, the following exactions are conditionally permitted: (a) taxes to cover the expenses of administration (Article 48); (b) contributions for military necessities or the administration of the territory under the written order of the commander-in-chief and against receipt to the payer (Articles 49 and 51);

² For adherence to the Hague Convention, see: L. Oppenheim, *International Law*, ed. by H. Lauterpacht, London, 1940 (6th ed.), Vol. II, p. 739; G. G. Wilson, *International Law*, Boston, 1935 (9th ed.), App. 3, p. xxxvii. Yugoslavia neither signed nor ratified the Convention of 1907, but she and Italy did sign and ratify that of 1899 (*Proceedings of the Hague Peace Conference*, 1899, p. 268) which remains in force, according to Article IV of the 1907 Convention.

*Ernst Feilchenfeld, The International Economic Law of Belligerent Occupation, Washington, 1942, gives a comprehensive summary of the problem as it stood at the beginning of the second World War. Cf. also Ernst Fraenkel, Military Occupation and the Rule of Law, London, 1944.

'This could be defined as "private property by destination" analogous to the "immovable property by destination" of the French Code Civil (Articles 517, 524). On this subject see William M. Franklin, "Municipal Property under Belligerent Occupation," this JOURNAL, Vol. 38 (1944), p. 383.

and (c) requisitions in proportion to the resources of the country and not in excess of the needs of the occupying army, against cash payment or receipt (Article 52). Certain types of strategic appliances, even if privately owned, may be seized under certain conditions. In every case the legal rights of the occupant with regard to private property are narrowly defined and compensation is always required.

With regard to public property, the rights of the occupant include administration, but here too the legal limitations are quite explicit. The occupant is only the administrator (Article 55). He may take possession of movable property which is "strictly the property of the state" (Article 53, paragraph 1), but the seizure of appliances and war material is permitted only on condition of ultimate restoration and compensation (Article 53, paragraph 2).

The occupation of large areas of Soviet territory has raised a novel problem not foreseen under the Hague Convention. Although the Soviet Union, which repudiated all treaties concluded by the Czarist regime, has not formally adhered to the Hague Convention, it is generally accepted that it considers itself bound by its provisions. Moreover, in his famous note on German atrocities of April 27, 1942, Molotov declared that the "Soviet Government . . . continues as hitherto to observe the obligations undertaken by the Soviet Union with regard to the regime for war prisoners according to the Hague Convention of 1907." In the Soviet Union there is no private property in the traditional sense. Instead there is "socialized," 6 "cooperative," 6 and "personal" property. The private property clauses of the Hague Convention would cover the Soviet category of personal property, but the heavy concentration of national wealth in state or socialized enterprises perhaps subjected to enemy administration much that would otherwise have been protected by the "private property" clause. This raises a problem analogous to the conflict of qualifications in international private law.8 While such Soviet agricultural units as the kolkhoz and the machine tractor stations could, by analogy, have been protected by Article 53, paragraph 2, which requires restoration and indemnity, the business and industrial enterprises of the Soviet Union would be protected along with other state properties. It should be noted that the same problem arises with regard to other European states which own considerable business property. Thus the shift from private to public ownership presents another of the problems which will harass those who continue to think within the Hague framework.

Isvestiya, April 28, 1942.

⁵ Article V of the Constitution of the U.S.S.R., literally reproduced in the Constitutions of the Union Republics. Cf. Article 52 of the Civil Code of the R.S.F.S.R.

⁸ Such is the so-called property of the kolkhoz (collective farm).

⁷ Articles IX and X of the Constitution of the U.S.S.R., reproduced in the Constitutions of the Union Republics. There are various types of "personal" property (Articles 54, 71 ff. of Civil Code) including "areas neighboring the house of the farmer."

⁸ E. A. Bartin, Droit International Prive, Paris, 1938.

C. Forms of Property Transfer Under German Occupation

It would be going far afield to describe Germany's methods of conquest of the banking, insurance, industry, and trade of the occupied countries. For present purposes it is sufficient to define, in legal terms only, the devices whereby Germany has become master of a great part of Europe's wealth. The German occupants have not merely committed all the acts expressly forbidden by the 1907 Convention, but they have devised new and more suitable encroachments on property rights, which have had far-reaching effects. They may be presented in schematized outline as follows:

I—As to the occupied countries as a whole:

- a. Contributions far in excess of the amount necessary to defray the expenses of occupation, contrary to Article 49. These contributions, which the Germans call "occupation costs," are in reality wholly disproportionate to the actual cost of occupation. Thus in France, for example, of the 72.3 billion francs paid by the French as "occupation costs" up to December 31, 1940, no less than 41.4 billions remained unused at that date, deposited to the account of the *Reichskreditkasse* in the Bank of France. By the end of 1941 the unused credit balance rose to 62 billion france.
- b. Requisitions without compensation and beyond the purview of Article 52, i.e., not for the needs of the army of occupation and wholly out of proportion to the resources of the occupied country.

II—Direct seizure of private property:

- a. Confiscation without compensation of the property of special categories of persons, such as (1) those who left the country, (2) those belonging to the ruling family, (3) those who were regarded as promoting the Allied cause, (4) Jews, and (5) citizens of annexed territories.¹⁰
- ⁹ The strategy behind German penetration of European industry is to establish links too strong to be broken even in the event of military failure. The methods are threefold: (a) the amalgamation of foreign and German industry through financial arrangements and the fiction of legal acquisition; (b) the reorganization of continental industry by directing the flow of raw materials, dismantling plants that may compete in the future and centralizing others to make control easier; (c) modification of production processes by "persuading" controlled industries to use ersatz materials, thus making them dependent on Germany for raw materials and technical direction. (The Statist, London, Vol. 138, No. 3314, pp. 150–151; see also: "The Penetration of German Capital Into Europe," Inter-Allied Bulletin No. 5, Inter-Allied Information Committee, London, 1942), and Occupied Europe: German Exploitation and its Post-War Consequences, London, 1944.

For the German technique of occupation, see: Raphael Lemkin, Axis Rule in Occupied Burope, Washington, Carnegie Endowment, 1944.

¹⁰ The houses and possessions of 1,500,000 Poles who were forcibly deported from the annexed territories during the first year of German occupation were turned over to Germans, mostly new settlers coming from various regions of the Soviet sphere of influence; in Alsace and Lorraine all property of enemies of Germany was confiscated; in Serbia, of Jews, and Gypsies; in Ostland, of Jews.

- b. Seizure of foreign holdings in the banks and private safety deposit vaults.
- c. So-called "aryanization" of property: the transfer of property defined as Jewish to German corporations and individuals, and in some cases, to the local "Aryan" population. This practice clearly violates Article 43 of the Hague Convention because it conflicts with the constitutional safeguards of equality of all citizens irrespective of race or creed. These guarantees are present in the constitutions of all the occupied countries.¹¹
- d. Trusteeship: certain enterprises, both individual and corporate, are assigned to so-called trustees of various German concerns instead of being confiscated outright. This practice was particularly widespread in Alsace-Lorraine where the entire iron and steel industry was turned over to the Hermann Goering Werke and other German concerns as of March 1, 1941.
- e. Coercion against owners to sell their domestic and foreign holdings and the auctioning of private art collections and securities in a quasi-legal manner.

III—Indirect confiscation:

- a. The creation of an arbitrary rate of exchange ¹³ in favor of the mark over the currency of the occupied country, thereby enabling German purchasers to obtain goods far below their actual cost.
- b. With regard to foreign trade, a manipulated clearing system under which Germany sends neither commodities nor exchange to the occupied countries in return for their "exports" to Germany. Consequently Germany's indebtedness to these countries has already reached astronomical figures.¹⁸
- c. With regard to the Netherlands, the establishment of a customs union which facilitates the purchase of Dutch securities and enterprises with German marks.
- ¹¹ The axis official of the Belgian government-in-exile to the law mentioned below and of the Luxembourg decree cited below define these acts as constituting an attack against the sovereignty of the Belgian state and Luxembourg, and especially against the constitutional principle of equality of all Belgians and Luxembourgers, without distinction of creed, race, and language.
- ¹² The rate of exchange of the French franc was set at 20 fr. to the mark after the collapse of France, while the rate existing previously was only 17.6. The real rate, if the purchasing power of the two countries were to be compared, would have been no more than 10 francs to the mark. In other countries, imposed rates were raised or lowered in accordance with German requirements. For the exchange rates, see: Lemkin, p. 52.
- ¹² The credit balance of Belgium at the end of August 1944 was \$1,440,000,000; of France, \$2,300,000,000. Before the occupation, Denmark owed Germany 7.6 million Kroner; in 1944, Germany owed Denmark 39 million dollars (*Free World*, Vol. III, No. 1, p. 70; *New York Times*, October 11, 1944).

During 1941, the Netherlands Bank's holdings of bills payable in Germany, resulting from the accumulation of large amounts of German marks, increased from 15.4 million guilders to 929.9 million guilders (*Knickerbocker Weekly*, 1942, No. 5).

It will be extremely difficult after the war to track down all these illegal property transactions. In many cases assets seized by Germany and transferred to neutral countries will have been sold to investors abroad. In the last war, assets looted by Germany and sold to persons in neutral countries were later purchased by investors in allied countries. Given the far more intricate system of plunder now employed by the Reich, the complexities implicit in such transfers have increased many times in comparison to World War I.

The Hague Convention covers explicitly only part of the ground, specifically outlawing improper levies and requisitions against occupied countries as a whole and certain direct confiscatory measures against private property. The illegality of indirect and camouflaged acts of confiscation must be implied from the general protection afforded to private property. The difficulty is that the maze of indirect and masked spoliation will be exceedingly hard to follow.

D. Allied Decrees Against Property Transfers Under Enemy Occupation 14

During the uneasy lull between the subjugation of Poland and the assault on Denmark and Norway (October 1939-April 1940), a number of threatened countries enacted laws prohibiting business organizations from disposing of assets abroad in the event of enemy occupation. On February 2, 1940, the Belgian government enacted a decree relating to the wartime administration of commercial enterprises. This law was later amended and extended by the Belgian government-in-exile through decrees on June 8, 1940 and October 31, 1940.15 Under these decrees the powers of all officers and directors of Belgian companies residing in Belgium were suspended with respect to the affairs and property of such companies located outside of Belgium. orders and instructions emanating from such persons were to be null and void abroad. At the same time the rights of directors or managers of Belgian companies residing outside of occupied or controlled territory were extended to permit them to exercise their normal functions even in the absence of the quorum required by the by-laws.

Measures of almost identical nature were enacted by the Luxembourg government on the eve of occupation and since that time (Decree of February 28, 1940, amended on February 5, 1941).¹⁶ An analogous step was

¹⁴ The present paper is concerned with developments before liberation. It should, however, be stressed that, to the best of our knowledge, no new development of any importance in the field have so far been enacted by the governments in liberated countries, except in France.

¹⁶ Moniteur Belge, February 7, 1940; June 8, 1940; November 22, 1940. English translation in Commerce Clearing House, War Law Service, Foreign Supplement, New York.

¹⁶ Original text in the *Mémorial du Grand-Duché de Luxembourg*, March 2, 1940, English version in the Federal Reserve Bank of New York *Circular* No. 2211 of May 12, 1941; *Mémorial*, February 15, 1941.

taken by the government of the Netherlands shortly before invasion (April 26, 1940) ¹⁷ to facilitate the transfer of the legal domicile of business concerns to Dutch possessions not occupied by the enemy. A decree issued immediately after occupation, on May 24, 1940, ¹⁸ vested the Royal Netherlands Government with the property rights of persons, business associations, and public bodies, "for the conservation of the rights of former owners." In response to confiscatory measures of the German forces of occupation, the Polish government-in-exile enacted a decree on February 26, 1940 regarding Polish property abroad.¹⁹

Thus far seven Allied governments have promulgated laws regarding transfer of property under enemy occupation: the Polish decree of December 2, 1939; ²⁰ the Netherlands decree of June 7, 1940 aimed at safeguarding the kingdom's interests in wartime; ²¹ the Belgian decrees of January 10, 1941 ²² relating to property transactions effected by the enemy; the Luxembourg decree of April 22, 1941; ²³ the Yugoslav decree of May 28, 1942 regarding all property transfers since the date of German invasion; ²⁴ the Greek decree of

¹⁷ Netherlands State Law Record No. 200; English translation by the Netherlands Chamber of Commerce, New York.

¹⁸ Netherlands State Law Record, May 24, 1940, as amended March 6, 1942, and May 7, 1942; English version in the Federal Reserve Bank of New York Circular No. 2091, July 2, 1940 and Circular No. 2633 of June 4, 1943.

¹⁹ Polish text in *Dziennik Ustaw Rzeczypospolitej Polskiej*, 1940, Nr. 4, Poz. 10. In this connection the legislation of the Protectorate is of interest, and is cited below:

July 15, 1941: Ordinance of the Ministerial Council for the Defense of the Reich regarding the registration of foreign property and German property abroad (Verordnungsblatt, Reichsprotektor 1941, S. 424 — Reichsgesetzblatt I, S. 439).

August 15, 1941: Ordinance of the Trustee for the Four Year Plan for the Liquidation of the Claims and Debts of Polish Property (Verordnungsblatt, Reichsprotektor 1941, S. 500-518 — Reichsgesetzblatt I, S. 516).

November 19, 1941: Ordinance of the Reich Protector of Bohemia-Moravia for the execution of the Debt Liquidation Ordinance of August 15, 1941 (Verordnungsblatt, Reichsprotektor 1941, S. 649).

20 Dziennik Ustaw Rzeczypospolitej Polskiej, No. 102, poz. 1006.

¹¹ Original text in the *Netherlands State Law Record* No. A6, 1940, English version issued by the Netherlands Shipping and Trading Committee, N. Y. After the occupation of Netherlands East Indies by the Japanese, a special Royal Decree was enacted on March 6, 1942 to safeguard the property in this colony (English translation as in footnote 17).

¹² Moniteur Belge 1941, No. 6, February 25, pp. 44–49. On the same date a second Belgian decree was promulgated to determine the effect of measures taken by the occupant and the provisions taken by the Government, both decrees accompanied by an axis official (the same, p. 44). It may be interesting to note that these two decrees are practically a literal reproduction of decrees of the Belgian Government-in-exile (Bordeaux) during World War I, decrees of May 31, 1917 (Moniteur, May 26–31, 1917) and of April 8, 1917 (the same, April 5–8).

The Luxembourg decrees are a reproduction, with minor changes, of the corresponding Belgian decrees (See: *Memorial du Grand-Duché de Luxembourg*, April 2, 1941, No. 2). English version in the Federal Reserve Bank of New York *Circular* No. 2268, August 29, 1941).

34 Sluzebne Novine, No. 7, 1942.

October 22, 1941; ²⁵ the Norwegian decree of December 18, 1942.²⁶ In addition, the Czechoslovak Government on December 19, 1941 made public a declaration concerning transfers and dispositions of property, ²⁷ and the French Provisional Government on November 12, 1943 issued a decree embodying the warning of January 5, 1943.²⁸

Some governments enacted supplementary provisions. For example, the Polish government on January 26, 1940, and on February 3, 1940, issued two decrees concerning a moratorium on public and private debts. On January 8, 1941, the Norwegian Government-in-exile served notice that it would regard all measures of confiscation of private property as well as transactions deriving from these acts, as illegal. On July 29, 1941, it provided for the reopening and revision of judicial and administrative decisions promulgated under German occupation. Later decrees (October 3, 1941 and October 9, 1942) suspended the statute of limitations for legal proceedings and established the machinery for invalidating property transfers.

For present purposes the constitutionality of the decrees enacted by the governments-in-exile is assumed, subject to subsequent developments.²² Their practical effect was very slight. They did not serve as a deterrent upon the occupant, nor did they restrain "collaborationist" elements in the local population from engaging in prohibited property deals under enemy occupation. Nevertheless, these decrees may loom large when the enemy is expelled and legitimate authority is reëstablished. For this reason a comparative analysis of such legislation projected against the background of the Hague Convention is imperative. The main features are as follows:

- (1) Article I of the Polish decree proclaims that all legal acts and regulations of the occupant which go beyond the limits of the Hague Convention are null and void. This provision is of importance for the illegality of those
 - 25 Greek Official Gazette, No. 172, October 28, 1941.
 - 28 Norsk Lovtidend, December 31, 1942, p. 182.
 - 27 Inter-Allied Review, 1941, No. 11.
- ²⁸ Official Journal, November 18, 1943, pp. 277-278, amended by the Ordinance of November 14, 1944 (Official Journal, November 15, 1944, p. 1310).
 - 29 Polish Law Gazette, 1940, Nos. 2 and 3.
- ³⁰ Provisional Ordinance on the Reopening and Revision of Legislative and Administrative Decisions and Administrative Decrees in Norway Under German Occupation. *Norsk Lovtidend*, No. 2, 1941, p. 119.
 - ⁵¹ Same, pp. 120-121, 179-180.

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²² See: Oppenheimer in this Journal, Vol. 36 (1942), p. 578; Alfred Drucker, "The Legislation of the Allied Powers in the United Kingdom," Czechoslovak Yearbook of International Law, 1942, pp. 45–59, 172–178, 190–195, 218–221; Dr. Manfred Lachs, "Polish Legislation in Exile," same, pp. 57–60; Dr. Egon Schwell, "Legislation in Exile: Czechoslovakia," in Journal of Comparative Legislation and International Law, 1942, pp. 120–124; "Legislation in Exile: Norway," same, 125–130; Mortin Domke, Trading with the Enemy in World War II, New York, 1943, Chap. 21: "Administration of National Assets Abroad by Governments-in-Exile"; S. A. Lowrie and M. Meyer, "Governments-in-Exile and the Effect of their Expropriation Decrees," in University of Chicago Law Review, Vol. XI (1943), p. 26.

acts according to domestic law which is not ipso jure affected by the international illegality of an act of the belligerent.

- (2) All the decrees which were published after occupation are retroactive. The Polish decree operates with regard to the legal acts of the occupant performed at any time (Article IX). The Belgian, Luxembourg, Norwegian, and Yugoslav decrees apply to transactions since the first day of invasion. The same may be inferred from the language of the Dutch law.
- (3) The decrees do not always differentiate between state and private The Belgian and Luxembourg edicts, which annul the "disposal and pledging" of state properties beyond the limits of normal administration, follow the Hague Convention's distinction between the two types of The Yugoslav decree, which assimilates to state property all property of regional administrative units and public bodies controlled by the state, voids all acts of disposal and all transfers without the qualifications of the Belgain and Luxembourg decrees. Furthermore the Yugoslav decree annuls all transfers and disposals of such property after April 6, 1941, regardless of whether the occupants had a hand in the transaction. second paragraph of Article I, voiding seizures of property by authorities illegally constituted on Yugoslav territory, is meant to remove the cloak of legality from the acts of the puppet Serb and Croat governments. wording of Article I, however, makes necessary a saving clause in Article VI which exempts the actions on Yugoslav territory by General Draja Mihailovich from the blanket prohibition.

With regard to public property, the Norwegian decree invalidates all transactions under enemy occupation except those specifically authorized by the government-in-exile.

As to private property, the Belgian and Luxembourg decrees differ from the Yugoslav in that they declare null and void all the measures of the occupants affecting private property while the Yugoslav edict only establishes a presumption that transfers of property since occupation are unlawful. The Greek decree differentiates between transfers in favor of the enemy, his subjects, or persons acting under his orders on the one hand, and all other persons on the other.

The Polish decree does not distinguish between public and private property. It voids all transfers or restrictions of property rights where the beneficiary is a foreign government, foreign citizen, or foreign corporation. This would seem to imply that such transactions are valid when in favor of Polish corporations or Polish citizens.

The Netherlands law, on the other hand, lays down no criteria for the validity of wartime property transfers. Instead all such acts must be scrutinized by a commission created for that purpose. Acts may be validated only with the approval of the commission. The law does not specify how approval may be secured by persons residing inside occupied Holland. The

inference is, however, that in the absence of such approval all acts mentioned in Article VI of the decree are invalid ex nunc.

A similar provision is contained in a Norwegian decree of October 3, 1941, regarding the acquisition of rights in Norwegian companies. These are reserved to Norwegian citizens who possessed such rights before April 9, 1940, the date of the German invasion of Norway, provided that permission was granted by the king or persons authorized by him. Here again it seems obvious that no such permission can be secured by persons living under enemy occupation, and that all such transfers are illegal and invalid.

- (4) The Belgian, Luxembourg, and Yugoslav decrees do not specify whether they refer to property within the country or abroad, whereas the Greek decree contains provisions for both cases and the Norwegian decree of December 18, 1942, explicitly refers to transactions concluded in Norway and in countries held by the enemy or his allies, or occupied or controlled by them. The Polish decree contains an unconditional ban on all regulations by the occupants affecting the property abroad of Polish citizens and of Polish legal persons (Article IV). The obvious difficulty is that this provision, which is more properly within the domain of international rather than municipal law, is valid only in so far as the courts of the country where such property is situated choose to recognize it.
- (5) All measures for the sequestration, administration, and change in the utilization or administrative personnel of the property or interests of private persons and Polish corporations are proclaimed null and void by Article III, paragraph 1.
- (6) "Voluntary" acts of utilization, administration, and change of personnel, if effected at the request and in the interest of Polish citizens, are not legal per se, but are subject to examination after the war. The same holds for acts of temporary administration (Article VI) in accordance with actual necessities. The procedural details for the recognition of such acts remain to be worked out at some later date. The Belgian, Luxembourg, and Yugoslav decrees do not provide this procedure for cases not affected by the general nullity. The Belgian and Luxembourg edicts explicitly recognize acts of normal administration whereas the Yugoslav decree is entirely silent on the subject.
- (7) The Belgian, Luxembourg, Dutch, Norwegian, and Yugoslav decrees refer to movable and immovable property irrespective of the owner's nationality or status, whether individual or corporate. The Polish and Greek decrees are somewhat different. As to individual owners, the question of nationality seems to be irrelevant from the viewpoint of the Polish decree, alien and stateless persons as well as Polish citizens being protected, except in regard to property abroad and the safeguards against losses in consequence

³⁵ On the problem of the validity of acts of the occupant in foreign countries, see: London International Law Conference, 1943, London, 1944, pp. 1, 75.

of legal acts (Article VII). With regard to corporations, however, only those of Polish law are covered. This may be because under Polish law foreign corporations must be registered in Poland in order to do business there. As worded, this provision may have important consequences. The Greek decree differentiates between Greek subjects and subjects of Allied nations, and all other residents or owners.

- (8) While the invalidity of titles acquired through illegal acts seems self-evident, Article V of the Polish decree expressly restates this principle, probably to exclude bona fides. The same article also nullifies private contracts referring to all titles and property covered by Articles I–IV as well as any property advantages acquired as a result of the illegal regulations of the occupant.
- (9) Private contracts where at least one of the parties is a Polish citizen, are presumed null and void if effected under direct or indirect pressure of the occupant. This would cover the "voluntary" transfer of the property of Polish citizens to Germans (Germanization), or to German and Polish citizens in the process of so-called aryanization. Under the Polish decrees private transfers may only be recognized if registered with the Polish authorities. Provision is made whereby persons whose interests are prejudiced (here again only Polish nationals) may register their objections and institute proceedings to nullify such transactions (Article VII).
- (10) While the Belgian and Luxembourg decrees (and, except for Article VII, the Polish as well) start, as mentioned, with the presumption that transactions based on enemy acts are illegal, the Yugoslav decree places the burden of proving that the contract was not freely made upon the prejudiced party. The Norwegian legislation opens the way for the invalidation of all private contracts resulting from, or influenced by, illegal pressure and abnormal conditions created by the German occupants or the Quisling regime. It is interesting to note that both the Norwegian decrees are based on a Norwegian law of 1918 concerning defects of contractual free will. The Greek decree provides for court decision in cases of forced transfers of property belonging to subjects of allied nations, even if made in payment of debts, if there is a suspicion that the transfer was made to the enemy, his subjects, or persons acting under his orders.
- (11) Whereas the Polish decree leaves open the problem of the possessor's offset against the legal owner, the Belgian and Luxembourg decrees expressly discharge the latter of the duty to refund the price. The possessor must seek recourse, if any, against the person from whom he obtained the property. It should be noted, however, that the Belgian and Luxembourg decrees do not rule on the validity of contracts executed without any participation on the part of the occupant.

The above-mentioned Norwegian decree also expressly provides that persons who obtain rights in Norwegian companies in violation of paragraph 1, cannot claim reimbursement for the amount paid. The decree of Decem-

ber 18, 1942, goes even further, ruling that the owner of confiscated property may demand reinstatement in possession of his estate or rights without compensation, irrespective of the possessor's good faith. The same decree also provides that mortgages, leases, and other encumbrances upon the owner's title assumed by the possessor shall impose no legal obligations upon the real owner. The problem of good faith is specifically stressed in the Greek decree. The Norwegian decree, as seen above, excludes bona fides explicitly in certain cases. The Belgian and Luxembourg decrees seem to follow the same line.

(12) Penal sanctions are imposed by the various decrees for rendering assistance to the enemy in acts against national property. Under the Polish decree the penalty may reach up to ten years imprisonment; in other cases punishment ranges from three months to five years. Fines are also provided, and under the Polish law the entire property of convicted Polish citizens may be forfeited. Under the Belgián law those convicted may also lose certain political and civil rights. Under the provision of the Norwegian statute, the person who illegally uses property which has been the object of seizure is required to compensate the lawful owner for all his losses.

The Belgian and Luxembourg laws provide that even when such offenses are committed by persons abroad, they are to be tried by Luxembourg or Belgian courts. This unusual provision, unless confirmed by international agreement, raises a very troublesome problem of jurisdiction.

Although the Belgian and Luxembourg decrees fix penal responsibility only for acts committed after promulgation of the said laws, there is no such provision in either the Polish or the Norwegian decree. The Yugoslav edict, on the other hand, provides that penal responsibility is to be established by a special law. Under the Polish decree of 1939 only Polish citizens are subject to criminal prosecution, whereas the other decrees do not contain this limitation. However, a Polish decree of October 17, 1942, provides that "All acts committed in violation of international law and harmful to the Polish State, to Polish institutions, firms, or citizens, will be punished by imprisonment." This decree applies to all persons committing such acts irrespective of their nationality.

- (13) The Polish law contains no statute of limitations presumably on the theory that general rules of prescription will apply; but the Belgian and Luxembourg decrees provide that no claim may be asserted more than three years after the conclusion of peace. The Norwegian decree of December 18, 1942, contains the shortest statute of limitations: six months from the date of a general armistice. Under the Yugoslav law, the prescriptive period remains to be established under a future decree.
- (14) The provision in the Polish decree aimed against the large scale settlement by the Reich of German colonists on Polish territory, declares null and

War and Peace Aims, Special Supplement to United Nations Review, No. 1 (January 1943), p. 36. Cf. also the amendment of December 17, 1942 of the Belgian Penal Code.

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void "the settlement of foreign citizens on real estate under any legal title." The wording of this clause is such as to cause considerable confusion, for it is difficult to see how the fact of settlement can be declared null and void.

(15) It is also difficult to grasp the purpose of the second paragraph of Article II of the Polish decree annulling acts which "result from the application of a policy of national extermination." The first paragraph of the same article may seem to cover the same acts whatever their motivation, unless the reference is here to Polish nationals.

E. THE INTER-ALLIED WARNING

A new element was introduced into the situation by the United Nations warning issued January 5, 1943, regarding property transfers in enemy occupied or controlled territories. The signatories represent all the countries occupied in whole or in part by the Axis with the exception of Denmark and the Philippine Islands, as well as the United States, the United Kingdom, and the British Dominions. The Baltic States do not appear in this State-None of the Latin American countries is a party. On April 17, 1943, however, Viscount Simon declared that inasmuch as the Nazis were transferring part of their loot to Latin America, the United Nations were concerned that these countries should be cognizant of the Inter-Allied policy. He added that the United Nations which were not original parties to the warning, as well as the Latin American countries which had severed relations with the Axis, had "responded most readily" to the suggestion that they associate themselves with its principles and had "made pronouncements of their own to that effect." He also disclosed that the United Nations had agreed on a plan for the recovery of Nazi looted property without indicating the nature of the said plan.

An Explanatory Memorandum-Note on the meaning, scope, and application of the Inter-Allied Declaration against acts of dispossession committed in territories under enemy occupation or control ^{35a} stated that the parties to the Declaration have set up an inter-Allied committee of experts which is at work on the task of considering the scope and efficiency of existing legislation in the allied countries, for the purpose of invalidating the transactions referred to in the Declaration. It is not known what, if any, recommendations were made.

The warning is addressed "to all concerned, and in particular to persons in neutral countries." This emphasis is justified in view of the probable flight of Axis-seized goods to neutral countries. It covers transfers or dealings with property rights in occupied or controlled territories but does not

^{*} New York Times, April 9, 1943.

^{35a} Cmd. 6418. See also: Final Act of the United Nations Monetary and Financial Conference (Bretton Woods) VI. Enemy Assets and Looted Property (Department of State, Conference Series 55, p. 22), and L. H. Woolsey "The Forced Transfer of Property in Enemy Occupied Territories", this JOURNAL, Vol. 37 (1943), p. 282.

refer to the Hague Convention or to the decrees of the governments-in-exile discussed above. This may introduce considerable confusion, since the warning may perhaps unwittingly lend itself to interpretation as a retreat from the policy laid down in the decrees. For, whereas the latter generally declare property transactions in enemy controlled territory to be illegal, the warning merely reserves all the rights of the signatories to declare such transactions invalid. Although nothing is said explicitly on the subject, it may be presumed, like the decrees, as applying ex tunc.

The warning is useful in that it protects both nationals and aliens resident in affected countries as well as the affected investments of foreigners who do not reside in enemy controlled territories. On the whole it does not eliminate or significantly clarify the vast array of problems which will arise in attempting to enforce the decrees of the governments-in-exile. Moreover, it does not attempt to fill out the existing gaps in international law. The warning is perhaps most important as an expression that the United States, Great Britain, Russia, and China now stand behind the smaller states which were the first to act with a view toward disentangling the mesh of German control over non-German property.

F. Conclusions

Viewing the decrees of the governments-in-exile as well as the Inter-Allied warning against the background of the Hague Convention and past experience of international law, it seems fairly certain that if steps are not taken soon to clarify the whole picture, a period of interminable litigation and legal wrangling may be expected after the war. Law suits of this type may well impede international business relations for many years to come. Because the job of disentangling the tentacles of Nazi control will be so tremendous, there may well arise a school of thought favoring the cancellation at one stroke of all claims and counter-claims in order to start with a "clean" slate. But such a move would be highly prejudicial to legitimate interests, public as well as private, and would leave Axis accomplices in substantial control of their loot. Cancellation provides no short-cut to a solution of the problem.

The possible postwar ramifications arising from the present muddle may be gauged by two well-known examples: The Soviet nationalization decrees and the Belgian nullification legislation of 1917. From *The Rogdaj* ²⁷ to

³⁶ See, for instance: Hiram Motherwell, *The Peace We Are Fighting For*, New York and London, 1943, pp. 32–33:

."It is easy to say, from a distance, that all Nazi financial operations put into effect during the war ought to be declared null and void and all property should be restored as of the status quo ante. But these operations were often accepted as legal at the time.

. Shall someone distinguish between voluntary deals and deals concluded under duress? Scores of millions of individuals will simply have to take their losses and start anew."

*7 278 Fed. 294.

U. S. v. Pink ²⁸ there were hundreds of cases in many countries which dominated the field of international private law for nearly a generation. It is therefore only too easy to foresee the plethora of cases which will come before courts after the war in connection with the scrambled property situation, unless adequate legal measures are taken to introduce some certainty into the picture.

The following is, therefore, suggested as a point of departure:

I—A formal reaffirmation of the Hague Convention by the United Nations to serve as the legal foundation for fixing civil and penal responsibility in a multilateral treaty which will be part of the general postwar settlement.

II—A United Nations declaration covering the type of indirect property violations discussed in this paper, and especially such acts which are not specifically covered by the Hague Convention or the decrees of the governments-in-exile.

III—A uniform law for all occupied countries and areas, laying down at least the following legal guides: (a) the scope of the property transactions covered; (b) the statute of limitations; (c) the presumptions of validity or invalidity; (d) the method for validation or invalidation; (e) the rights of bona fide third persons; (f) the penal sanctions for willful connivance with the occupants; and (g) a code of summary procedure to permit the speedy clearing of claims.

IV—A general convention signed by victorious, defeated, and neutral states alike should lay down general rules of jurisdiction and procedure for the purpose of expediting the effective settlement of all property claims arising from the direct or indirect violation of public and private property rights under Axis occupation. This convention should include the following:

- (a) The removal, with respect to such claims, of the immunity of states from suits in courts abroad in order to permit the persons affected to obtain redress wherever assets of the states exist. A natural concomitant of this is that such assets should be subject to execution wherever they may be found.
- (b) International judicial assistance in trial commissions, the authentication of documents and similar acts.
- (c) Recognition and execution in the respective countries of the judicial decisions duly reached.
- (d) The establishment of rules of priority in the execution of claims arising out of illegal transfers of property.
- (e) The international pooling of Axis assets located abroad for the purpose of assuring a just priority in the satisfaction of public and private property claims arising from the illegal practices of the Axis.

^{38 62} Sup. Ct. 552 (reprinted in this JOURNAL, Vol. 36 (1942), p. 309).

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ON THE FOUNDATIONS OF INTERNATIONAL LAW

By John P. Humphrey McGill University, Faculty of Law

Since the collapse of the European system of the Middle Ages and the birth of modern international law most jurists have worked on the assumption that the principles underlying the international legal order are radically different from those that lie at the base of national law. With the disintegration of the authority of the Pope and the Emperor there had come into being a number of independent states that recognized no political superior and hence considered themselves as equals. In their relations with each other, at least, these states acted like the sovereign bodies which in fact they were. In so far as international relations were concerned the world had returned to a condition of complete anarchy. The states of the world lived in that condition of natural equality described by Hobbes where each was the potential enemy of every other. In the formulation of their policies and in their acts each state took into account its own interests only and when these interests came into conflict, as they inevitably did, the only arbiter was brute force.

If the world were to be saved from complete chaos it was necessary to find some system of rules that could govern the relations which, despite the break-down of the old order, were bound to persist between the new states. Such a system was discovered in the new science of international law. In the conditions of the time it would have been wasted effort to urge the kings and princes who had only just thrown off the supremacy of the Pope and the Emperor to submit to the authority of some new political superior. The classical writers did not, therefore, posit the necessity of a political authority over the new states. They found a substitute in an international law based on the principles of natural law and the consent of the states.

The classical writers fall into three groups according to the place which they gave to the two factors that served as the basis of the new system. The cositivist school, which was foreshadowed by Gentilis, and which had its first exponent in Zouche, gave first place to the consent of states. The crotian or eclectic school based its system on the twin pillars of consent and natural law, Grotius having made a distinction between the natural and the voluntary law of nations. The naturalist school, on the other hand, of which the chief exponent was Pufendorf, completely identified international law with natural law.

Natural law was an element in the theories of all these writers—even the positivists. For while in positivist doctrine agreement and eustom were the sources of international law, its rules had nevertheless to be in harmony with

right reason. Thus Zouche defined international law as "the law which is recognized in the community of different princes or peoples who hold sovereign power—that is to say, the law which has been accepted among most nations by customs in harmony with reason, and that upon which single nations agree with one another, and which is observed by nations at peace and by those at war." 1 Since antiquity, men had believed that there existed a system of divinely ordained rules of human conduct that could be discovered by the exercise of reason. These rules were both anterior and superior to positive or man-made law. In the period in which the foundations of modern international law were being laid this belief was still universally held and still exercised a powerful influence over men's minds. (As long, of course, as men believed in the existence of natural law, and as long as they believed that its precepts governed the conduct of States, those precepts could provide a fairly effective substitute for the public law that had disappeared with the disintegration of the empire and the temporal authority of the Pope. That public law had itself been more theoretical than real. But the dyarchy of Pope and Emperor had at least provided a unifying principle and a source of ultimate authority. The belief in natural law provided the same things. In an age dominated by religious sentiment princes and rulers would not lightly ignore precepts that they and everyone else believed to emanate from God. And, as in primitive law, the fact that these precepts might have no human sanctions or that they were inadequately organized was relatively unimportant. It was immaterial, indeed, that this natural law might have no feal existence. The important thing was that men believed that it As long as they believed in the existence of a system of natural law, and as long as there was agreement on the precepts that right reason prescribed, the situation was substantially the same as if those precepts had in fact been laid down by divine authority. Even after the emancipation of the concept from religious associations natural law continued to provide standards of conduct (many of which indeed survived belief in the system as customary rules) and a principle of unity. But, while it continued to be regarded as binding, its divorce from divine authority and the disappearance of divine sanctions weakened its effectiveness.

In the course of time men began to lose faith in this natural law the discovery of which was said to be possible by the exercise of reason. They began to ask what the rule of natural law was when the reason of one man indicated one solution and the reason of another man a different one. The concept implied the existence of some *élite* or final arbiter whose right reason would predominate in cases of doubt. It is significant that, while, in the

¹ Juris et judicii fecialis, sive juris inter gentes, etc. (Brierly's translation), I, 1, 1. It will be noted that the definition seems to make a distinction between customary and conventional law in this respect. Note that Zouche recognized the existence of an international community, and that he did not consider it necessary that all states bound by them should share in the enactment of customary rules.

time of Grotius, the belief in natural law was shared by Roman Catholics and Protestants alike, in the twentieth century the doctrine finds most of its adherents within the Roman Catholic Church, the hierarchy of which provides such a final arbiter. The natural law concept also lingers on outside the Church, sometimes in the writings of jurists who give it another name, but the so-called renaissance of natural law is anything but a continuation of the theory as it was understood in Antiquity and the Middle Ages. There are few jurists who would now use the language of Cicero or of the later naturalists. Natural law is no longer described as anterior and superior to positive law. Modern natural law is natural law "with a variable content," or simply an ideal standard of perfection. Thus emaciated it can no longer serve as the legal basis of the international order.

Jurists had begun to reject any identification of international with natural law even before general belief in the existence of the latter had been abandoned. Before the end of the 17th century there existed already jurists who were arguing that international law was quite independent of natural law with which its principles were not necessarily in harmony. But for a long time to come such opinions were to be exceptional; and natural law remained firmly imbedded at the basis of the system until comparatively recently. By the 20th century, however, the consent of states had, in the dominant theory, become the sole basis of international law.

The authority and even the existence of natural law having been denied, there remained no system of rules external to the various states that could govern their conduct; for the separate and independent states of the world were still without any political superior. It followed logically from the admitted fact of sovereignty that, if the states were to be subject to law, that law must emanate from the states themselves. Since states were sovereign and independent they could be bound only with their consent. The only other possible conclusion seemed to be that there was indeed no such thing as international law. And there were some whose logic lead them to that conclusion. How, they asked, can a sovereign state be bound by law? Either a state is sovereign, in which case it cannot be bound by any law higher than its own, or it is bound by law, in which case it ceases to be sovereign. That states did in fact act as sovereign bodies was clear. Only when it suited their convenience did they conform to the rules of so-called international law. The system that had been created by Grotius and his disciples was therefore a system of moral rules, no more. But, on the whole,

² See Samuel Rachel, *De jure naturae et gentium dissertationes*, par. 5, p. 159; par. 56, p. 190 (Bate's translation). And see J. W. Textor, *Synopsis juris gentium*, I, 3a (Bate's translation).

³ For a well known statement of the theory, see Oppenheim, *International Law* (4th ed. by McNair), Vol. i, pp. 19–25. And see P. E. Corbett, "The Consent of States and the Sources of the Law of Nations," in B.Y.B.I.L., 1925, p. 20. Professor Corbett's more recent article, "Fundamentals of a New Law of Nations," *University of Toronto Law Journal*, Vol. I, p. 3, is, as the author himself says, "to some extent . . . a retraction."

writers agreed that international law was real law; and most of them based its validity on consent.

The only kind of consent that is consistent with the retention of sovereignty is consent that can be withdrawn at any time. As Jellinek put it, a sovereign state can limit its sovereignty by its own act or decision; but it must be open to it to disengage itself at any time from its obligations which remain binding as long only as the basic consent to be bound subsists. Such a conclusion, of course, amounted to a denial of the binding nature of international law. There were other jurists who, while they accepted the fundamental consentist position that a state cannot be bound against its will, nevertheless found a continuing source of obligation in consent once given. According to Triepel, the agreement (Vereinbarung) of states creates a common will which is henceforth binding. State sovereignty thus disappears. A state can be independent in the sense of not being subject to any other state; but like persons sui juris in Rome they are subject to law. But while the concept of the Vereinbarung undoubtedly meets the most fundamental objection to consentist theory, it does not prove its soundness.

That the consent of the subjects governed by it is relatively more important in international than it is in national law must, of course, be admitted. Modern international law is predominately a consensual law. By far the greater part of its rules have their source in treaties the immediate basis of which at least is the agreement and hence the consent of the contracting parties. And while, as we will argue later, the ultimate source of the legal character of treaties cannot be the consent of the parties, in principle, a state must give its consent before it can be bound by a treaty. It follows that states can in large measure control the rules by which they will be bound. While not the only factor, the consent of states is thus seen to be the controlling factor in the international legislative process. It is also a controlling factor in the international judicial process; for it is an admitted

^{&#}x27;See the admirable summary of Jellinek's theory of self-limitation in H. Lauterpacht, The Function of Law in the International Community, Oxford, 1933, p. 409.

⁵ Triepel argues that the ordinary contract (and the same thing is true of the ordinary treaty) cannot create a common will, because the parties have different ends in view. In the Vereinbarung, on the other hand, the content of the wills of the various parties is the same. See Droit international et droit interne (trans. René Brunet), Paris, 1920, p. 32. On p. 68 Triepel says: "Le contrat ne peut pas produire de règles juridiques, parce que, d'après sa nature, il ne peut pas faire naître une volonté commune. Mais ce que le contrat ne peut jamais, la Vereinbarung le peut. Les Etats peuvent créer du droit objectif, quand ils adoptent par Vereinbarung une règle qui doit régir leur conduite ultérieure d'une façon permanente. Ici non plus la Vereinbarung ne ment pas à sa nature. Elle consiste en plusieurs manifestations de volonté, dont le contenu est la même. Chacun veut la même chose: la création d'une norme juridique, qui doit les régir tous egalement dans l'avenir. .."

Note, however, that in one respect international law accords less respect to consent than does the contract law of modern states; for, while the latter considers a forced consent as being non-existent, in international law a state that enters into a treaty as the result of force or duress is nevertheless bound by it.

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principle of customary international law that a state is not obliged, without its consent, to submit to the international settlement of its disputes. suming, therefore, that it has not bound itself otherwise by treaty, it is legally possible for a state to prevent judicial determination of the legality of its conduct. The consent of states is even a controlling factor in the operation of the international executive process. Since the international order possesses no executive organs other than the separate states, the consent of the latter is in principle a condition precedent to executive action, although States may bind themselves by treaty to act against violators of the law. But even where they have accepted such an obligation, the international society possesses no machinery by means of which they can be forced to fulfil it. The international legal order has not yet attempted to cope with the question: quis custodiet custodes? It would hardly be an exaggeration, indeed, to say that states are not even under an obligation to submit to sanctions against their will. For they are under no legal obligation to acquiesce in the use of force against them; and they can probably change the executory character of sanctions invoked against them by resorting to their common law right to precipitate a state of war.

But if the element of consent is relatively important in international law, the consent theory cannot explain its character of law. At first blush, the theory seems to provide an explanation for the legal character of treaties, the immediate source of which is the agreement, and hence the consent of states. It is clear, however, that, if treaties are binding, it is because the international legal order, like the national order, provides that agreements shall bind the parties. As Brierly says, "consent cannot of itself create an obligation; it can do so only within a system of law which declares that consent duly given, as in a treaty or in a contract, shall be binding on the party consenting." In international law the binding force of treaties results from the customary rule pacta sunt servanda. The problem then arises to explain the legal validity of that rule.

The principle that agreements are binding possesses no independent force of legal necessity. Agreements are binding because the legal order so provides. And, what is more, the legal order may achieve its purpose in other ways. This is shown by known facts of legal history which teach us that long before agreements as such were recognized as binding, obligations arose from form or some other element. Even in the developed Roman law, there was no rule corresponding to pacta sunt servanda. Indeed it was a principle of that law that mere pacts did not give rise to obligations: nudum pactum obligationem non parit. In the early Roman law the obligation arose not from the fact of agreement but always from some other factor. For an agreement to be binding it had to be clothed in a particular form or accom-

⁷ Permanent Court of International Justice, Eastern Carelia Advisory Opinion, *Publications*, Series B, No. 5, p. 27.

⁸ Law of Nations (3rd ed., 1942), p. 43.

pany some act and the important thing was the formality, not the agreement. In the later law it was admitted that agreement alone was sufficient to give rise to legal obligations in certain contracts, i.e., the consensual contracts of sale, lease, partnership, and mandate; but the principle was never generalized. The idea that obligations result from agreements, which is at the base of the modern law of contract, is a canonist innovation. But even in modern systems consent is not the only element in contracts. It is sufficient to refer, by way of example, to the civil codes of France and Quebec which state that there are four requisites to the validity of contracts: parties legally capable of contracting; their consent legally given; something which forms the object of the contract; and a lawful cause or consideration.¹⁰

If the legal character and binding force of treaties can be established by reference to the customary rule pacta sunt servanda how can the validity of that rule be established? Certainly not by reference to the consent of states. It is now generally admitted that the consent theory cannot explain the validity of international custom. (If states could be bound only with their consent, logic would require that every state should give its consent to the enactment of any customary rule by which it is to be bound. versally admitted, however, that this is unnecessary.11) The consentists attempt to overcome this difficulty by saying that the consent may be tacit. Thus, they explain the undoubted fact that new states are governed by the customary law already in existence at the time of their admission into the society of states (in the formulation of which they could, of course, have had no part) by saying that such new states tacitly accept the existing rules of the society.12 This is pure fiction—reminiscent of the social contract. ality the states already established in the society of nations do not recognize any right in new states to accept or reject existing rules of customary law.

Even if we could accept the tacit consent fiction it provides no explanation for the binding character of those rules that evolve after a state has been admitted to the international society and which far from having been tacitly

⁹ J. Brissaud, Manuel d'histoire du droit privé, Paris, 1935, p. 452.

¹⁰ Quebec Civil Code, Art. 984. See Art. 1108 of the French code.

¹¹ See, for example, Zouche's definition of international law quoted above. Among modern authorities, John Westlake may be quoted: "When one of those rules is invoked against a State it is not necessary to show that the State in question has assented to the rule either diplomatically or by having acted on it, though it is a strong argument if you can do so. It is enough to show that the general consensus of opinion within the limits of European civilization is in favour of the rule." International Law, Part I, p. 16. George A. Finch, The Sources of Modern International Law, Washington, 1937, p. 37, repeats Westlake's language. And see Brierly, Law of Nations, p. 50: "It would hardly ever be practicable, and even the strictest positivist admits that it is not necessary, to show that every State has recognized a certain practice. . . ."

¹² See, for example, Oppenheim, *International Law*, p. 19: "New States which came into existence and were through express or tacit recognition admitted into the Family of Nations thereby consented to the body of rules for international conduct in force at the time of their admittance. It is therefore not necessary to prove for every single rule of international law that every single member of the Family of Nations consented to it."

accepted have been expressly rejected by it. Thus most if not all of the Latin American republics reject the rule that establishes an objective minimum standard for the treatment of foreigners but international tribunals nevertheless apply that rule even in disputes involving those states—and this notwithstanding the fact that the modern customary law on the international responsibility of states did not develop until after the admission of the Latin American republics into the family of nations.¹⁸

The truth probably is that custom receives its legal character in the international order for the same reason and no other that it receives that character within states. Why it is binding, in either order, is a question to which the jurist can probably provide no certain answer. But it is quite clear that in national societies, at least, custom is not binding because all the individuals bound by it have joined in its formulation or even consented to its enactment.

Having abandoned consent as the basis of international law, some jurists try to prove its validity by reference to some such concept as that of community.14 Where there is a community, it is said, there there is law. Ubi societas ibi jus. Still others, including the brilliant Austrian pure law school, deny that it is possible by the use of juridical techniques to prove the ultimate validity of any legal system whether international or national You can prove the validity of particular subordinate norms in a legal system by referring to some higher norm. Thus, a municipal by-law is valid if it can be shown to have been enacted by a municipal authority within the exercise of powers delegated to it by Parliament, e.g. in a municipal corpora-That statute is itself valid if it was adopted by Parliament in accordance with the constitution. (But you cannot by the use of purely juridical techniques prove the legal validity of the constitution; for there is no higher authority from which the constituent body can be shown to have received its powers. The same is true of international law. If, therefore, a jurist is asked to demonstrate the validity of the sources of international law, he must answer that juridical methods are not adequate to the task of proving the validity of the ultimate source of any legal order. It is necessary to resort at some point to some fundamental hypothesis or axiom the validity of which cannot be proved juridically. Even the consent theory rests on an unprovable axiom, namely, the proposition that agreements should be respected: pacta sunt servanda.)

The authors do not agree on what the fundamental norm of international

¹³ On the historical development of this branch of the law, see F. S. Dunn, *The Protection of Nationals*, Baltimore, 1932, p. 46.

¹⁴ See, for example, Georges Scelle, Précis de droit des gens, Paris, 1932, Vol. I, p. 2. "L'étude des sociétés primitives et des sociétés modernes nous apprend que le droit est un produit spontant du milieu social, antérieur et supérieur a toute acceptation, peut-être même à touts conscience claire des individus dont il régit les comportements." Scelle, who finds the source of law in biological necessity, defines it as "un impératif social traduisant une nécessité née de la solidarité naturelle." See same, p. 3. His "droit objectif" is, as he admits himself, a type of natural law.

law is. Some, including Anzilotti¹⁵ and, at one time, Verdross,¹⁶ say that it is the maxim, pacta sunt servanda. We have already expressed our opinion that this is nothing more than a specific rule of customary international law. If that is so, to attempt to establish the validity of customary law by reference to it is to argue in circles. But even admitting that the maxim expresses the fundamental norm and not merely a specific rule of international law, it does not explain the validity of custom which, as we have already argued, is certainly not grounded in the consent or agreement of its subjects.

Realizing the necessity of finding a more general fundamental norm than pacta sunt servanda, some writers have sought to ground the validity of international law in the collective will of the subjects governed by it. This idea is usually expressed by saying that the fundamental norm of international law is that the will of the international community shall be obeyed.¹⁷ Could we accept this way of thinking, we would prefer a slightly different formula, namely: the will of the international society shall be obeyed. 18 While we cannot agree that the *will* of the international collectivity, be the latter a community or a society, can be a source of law, we admit that, were it possible to accept it, the rule that the will of the international community or society shall be obeyed would provide an infinitely better explanation of the validity of international law than pacta sunt servanda. It is not necessary that all the states governed by a customary rule should have shared in its enactment even tacitly. But if a sufficient number of them recognize its existence either expressly or by their conduct, it might be said that the international collectivity has expressed its will. It might also be said that it is the will of the collectivity that rules once enacted or obligations once accepted shall continue to be binding until they are repealed or terminated by means recognized by the order established by that will. Not only does this theory provide a plausible explanation for the legal character of existing rules of international law, but, what is probably even more important, it provides a more satisfactory basis for the future development of the legal order than does pacta sunt servanda.

The jurists who say that the fundamental norm of international law is that the will of the international community shall be obeyed admit that it is impossible to demonstrate by juridical means why this will should be obeyed. We do not think that this is a reason for rejecting the norm; for, as we have

¹⁸ Cours de droit international (trans. by Gidel), Paris, 1929, Vol. I, p. 67, "Le droit international se constitue par le moyen d'accords entre les Etats qui tirent leur valeur obligatoire de la règle pacta sunt servanda et il existe seulement dans les limites où des accords de ce genre sont intervenus." Anzilotti analyses custom as "accord tacite."

¹⁵ See P. E. Corbett, "Fundamentals of a New Law of Nations," University of Toronto Law Journal, Vol. I, p. 10.

¹⁷ See Corbett, as cited, p. 11.

¹⁸ Note that Lauterpacht, as cited, pp. 421-2, uses both terms without, however, distinguishing their meaning. He also uses the formula, volunts civitatis maximae est servanda. His "super-State of law" is substantially what we would call the international society.

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already argued, it is not possible to demonstrate the ultimate validity of any legal order by juridical reasoning. But the norm also implies two other assumptions, namely, that there is such a thing as an international community or society, and that that community or society possesses a will of its own.

It is useful, we think, to make a distinction between two different kinds of associations or relationship. Where the forces uniting the collectivity are natural, we call the association a community (Gemeinschaft). Where those forces are legal in character, we call the association a society (Gesell-schaft). Since the time of Suarez, 20 jurists have posited the existence of an international community. This assumption is based on strong sociological if not legal grounds. For, if evidence of the existence of a community can be found in certain natural elements of cohesion, such factors can be found operating beyond national borders. There is in fact an international life. And, while the factors of international cohesion are undoubtedly less intense than are the natural influences that cement living in common within states, that international life is becoming daily more important and more complex.

Mankind may still be divided by religious, linguistic, social, economic, and cultural differences that continue to foster national prejudice. Considerations of race and nationality may still influence thinking and conduct. pageantry and symbolism of the state may so completely dominate the imaginations of most people that they are incapable of loyalty to a higher idea. Men's eyes may still be riveted on the national state as the highest ideal of political organization. Patriotism may still be regarded as the highest For a great many people public spirit and the capacity to serve their fellow men may stop at state boundaries. National independence or, where it does not exist, the striving for it may continue to produce deep seated sentiments of national exclusiveness and self sufficiency. It may still be possible to organize peoples against peoples in wholesale homicide. But states do have relations with each other; and, in peace-time, these relations are conducted on a more or less orderly basis. What is even more important, the interests and relations of individuals increasingly extend beyond state borders. Notwithstanding certain recent retrograde developments the industry and commerce of the world is to a large degree based on an international division of labour. Improvements in the means of travel and communications have facilitated the exchange of goods and ideas. bers of people are as familiar with the geography, history, art, and culture of foreign countries as they are with their own. In the world of the mind and

¹³ This distinction has been suggested to us by Ferdinand Tonnies' distinction between' Gemeinschaft and Gesellschaft. See "Gemeinschaft und Gesellschaft," Handwörterbuch der Soziologie (1931) as translated by Loomis, Fundamental Concepts of Sociology (1940). It will be noted, however, that we do not follow him in his definition of a society. For to a jurist a society can only mean an association united and governed by legal rules, whatever that term may mean to sociologists.

²⁰ Tractatus de legibus ac deo legislatore, Book II, ch. xix, sect. 9. And see Zouche's definition of international law quoted on p. 232 above.

the spirit there are indeed no national boundaries. Homer, Shakespeare, and Goethe are international possessions. German music and French painting are not the exclusive national property of Germany and France. American inventiveness and British institutions have changed conditions of living all over the world. Economic and social experimentation in Russia has shaken the foundations of existing societies everywhere.

We have no hesitation, therefore, in asserting that while the international idea may not yet be strong enough to control men's minds, there does in fact " exist an international community (Gemeinschaft). But having accepted this, the concept of law does not, we think, follow automatically. a strong probability that men and women associated together in a community will also be governed by legal rules. Or to put the same thought in another way, there is a strong probability that a community will also be a society. (Life in common is impossible, even in the most rudimentary or tenuous relationship, unless there exist certain standards of conduct generally recognized by the members. But these standards do not necessarily possess the character of legal rules. They tend to take on that character. however, as the life of the community crystallizes and develops. pretend to be able to explain how of why this happens. But it may be suggested that in primitive societies biological 21 and religious 22 factors play an important role. In the modern international community, economic necessity and the necessity of providing some machinery for the peaceful settlement of disputes may be the governing factors.)

While a community is not the same thing as a society,²³ the natural cohesive factors that characterize communities are the flesh and blood of societies and of law. Societies may exist in which few or none of these non-legal influences operate; but such societies are weak indeed. Assuming that there is an international society, it is such a society. For while the elements of community undoubtedly exist in it, it is still relatively poor in those non-legal bonds that draw peoples and states together. The international society is a weak society not only because it lacks a fully developed legal and governmental organization, but because it is poor in the intangible things that give breath and life to legal formulas and governmental machinery and institutions. This is not to say, however, that the task of organizing the world society must be postponed until the world community has gained strength; for any improvement in world legal and governmental institutions will itself strengthen community bonds. Legal rules and governmental machinery are themselves factors of cohesion.

We do not think that it is possible to demonstrate the existence of an international society unless the existence of international law has been proved or taken for granted. Assuming that there is such a thing as international law,

²¹ See Scelle, work cited, p. 3.

²² See Fustel de Coulanges, La cité antique, Strasbourg, 1875 (rev'ded.), in general.

²³ Cf. Scelle, p. 4. "Toute société de fait est en meme temps une société de droit. . . .".

the existence of an international society can be easily proved; for, to transpose the traditional formula, ubi jus ibi societas.44 Given law the concept of society follows automatically. It is also possible to demonstrate the existence of law granted the existence of society. The two concepts are indeed concomitant. The one is evidence of the existence of the other. What the language of the jurist, law and society are different ways of saying the same thing. To attempt to prove the existence of one of them by reference to the other therefore is to argue in a circle. We think, however, that just as there is evidence of the existence of an international community, there should be enough evidence of the existence of an international society to satisfy a sociologist if not a jurist. From the point of view of the former, the presence of rational as opposed to natural will 25 in an association is evidence of the existence of a society. Such evidence can be found in the fact that the international community has been partially organized and possesses certain organs and instructions of its own. We admit that it possesses relatively few such organs apart from the separate states, and that even these organs are almost completely dominated by the states. But organs there neverthe-The system of rules called international law—which certainly exists whether or not it can be said to constitute true law—is, moreover, a rational and not a natural expression of will. We think, therefore, that a sociologist would be obliged to recognize elements of society in the international relationship. But this evidence is not enough to satisfy a jurist. (To prove the existence of a legal society it would be necessary to show that the rules called international law to which we have referred really are legal It is not enough to show the presence of rational will in the association; it must be shown that there is legal will.)

We think that, with the help of some assumed fundamental norm other than the one that we are now discussing, 26 it is possible to show the presence of legal will in the international relationship. But that will is not a collective or common international will. There can be no such thing as a will apart from the wills and minds of human beings. We do not deny that there can be such a thing as a community or a society. We even think that

²⁴ We are here translating societas as meaning society, not community.

Torries distinguishes between natural and rational will as follows: "The whole intellect, even in the plainest man, expresses itself in his knowledge and correspondingly in his volition. Not only what he has learned but also the inherited mode of thought and perception of the forefathers influence his sentiment, his mind and heart, his conscience. Consequently I name the will thought of in this sense natural will (*Wesenwille*), contrasting it with the type of rational will (*Kurwille*) in which the thinking has gained predominance and come to be the directing agent. The rational will is to be differentiated from intellectual will. Intellectual will gets along well with subconscious motives which lie deep in man's nature and at the base of his natural will, whereas rational will eliminates such disturbing elements and is as clearly conscious as possible." Loomis, *Fundamental Concepts of Sociology*, as cited, p. 15.

The assumed fundamental norm that the will of the international community or society should be obeyed.

communities and societies have existences apart from the existences of their members. But we deny that a collectivity can have any will that is distinct from the separate wills of its members. If fifty people form a community or a society, there are fifty wills, not fifty-one. It is possible, even probable, that the legal order that governs a society may attach a greater importance to the wills of some of its members than to others. It may even provide that for the purposes of the society the will or wills of one or a few of the members only will have significance. In such circumstances, it is convenient to say that the will of the society is the will or wills of the designated member or members. This manner of thinking may even be formulized by the legal order which may attribute a human will or wills to the society. But this is a pure fiction, useful as it may sometimes be.

If a collectivity cannot have a will of its own, it cannot be said that the will of the collectivity should be obeyed. We must reject therefore the suggestion that the fundamental norm of international law is that the will of the international community or society shall be obeyed.²⁷ This puts us in the necessity of positing some other fundamental norm. We suggest that in so far as existing international law is concerned, the fundamental norm is simply the precept that international custom shall be obeyed. This hypothesis cannot, of course, explain the legal character of custom itself. Why international custom should be obeyed the jurist cannot say, although it would undoubtedly be easy to find a sociological explanation in the necessities of international group life. But if the norm does not provide a juridical explanation of the legal character of custom, it does, through the customary rule, pacta sunt servanda, explain the validity of treaties.

It may be objected that this norm assumes the existence of law. We can only answer that all assumed norms ²⁸ make this assumption. Another possible objection is that it provides no criterion for identifying custom. But this is also a characteristic of other suggested hypotheses. Even the admitted fundamental norm of national law, that the constitution shall be obeyed, does not identify the constitution; and the rule that the will of the international community shall be obeyed does not attempt to identify that will. As in those formulas, the terms used in the suggested norm must carry with them their own definitions. By custom we mean a body of customary rules that emanate directly from the undifferentiated mass of the subjects governed by them and which are habitually obeyed because they are generally regarded to be binding. Whether or not a particular norm satisfies this definition is, we think, a question of fact the determination of which involves recourse to the judicial process.

²⁷ The same objection applies of course to Lauterpacht's formula, voluntas civitatis maximae est servanda.

²⁸ Pacta sunt servanda; the will of the community shall be obeyed; the will of society shall be obeyed; voluntas civitatis maximae est servanda; the constitution shall be obeyed; quod principi placuit legis vigorem habet; etc.

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We are not saying that the norm prescribing obedience to international custom is the only possible fundamental norm of an international or supranational legal order. The norm might be that the supranational constitution shall be obeyed or, in a unitary world state, that the will of the supranational dictator shall be obeyed. In the present stage of world organization, however, there is in fact no supranational political organ superior to the separate states; and there is no world constitution. If a world political authority acting under a world constitution is ever established we could posit a satisfactory fundamental norm not only of international or supranational law but of all law. That norm would be that the constitution of the world society shall be obeyed.

THE LAW OF ASYLUM WITH RESPECT TO THE PROPERTY OF REFUGEES *

BY FOLKE SCHMIDT

Professor of Law, University of Lund

Modern international private law has adopted the hypothesis of the equality of foreign and domestic law. As Savigny says, the judge must apply the law of the place with which the case is connected without considering whether this law is that of his own country or of a foreign country.

This hypothesis of the equality of foreign and domestic law presupposes, as Savigny also points out, a spiritual relationship between the different countries. During this century, however, we have experienced several revolutions which reveal diametrically opposed ideas in European culture. The first evidence of this was the anti-clerical movement in France at the beginning of the century when the monastic orders were forcibly wound up, the monks forced into exile, and their property confiscated. The same situation, that of a certain group of citizens being expelled from their homeland, has since been repeated in an exaggerated form as a consequence of Russian anti-capitalism and German anti-Semitism.

The courts of other countries have had to consider in a variety of connections the legal problems which these revolutionary upsets have occasioned. A survey of legal practice in various countries is instructive. For practical reasons we are dealing here only with Scandinavian, French, German, and English law.

Strong anti-clerical tendencies existed in France around the turn of the century. In the French Law of Associations of July 1, 1901, Loi relative au contrat d'association, a regulation was inserted that all religious orders should be abolished which had not previously, or within a given period, obtained state approval. This regulation struck, among others, the Chartreuse monks, who made their world-famous liqueurs at their main cloister in the Dauphiné. The monks had registered the trademark "Chartreuse" for their liqueurs in France as well as in a majority of other countries.

* Translation of article in Svensk Juristidning, August, 1944; reproduced by permission. The following abbreviations are used in the footnotes of this article:

NJA-Nytt juridiskt arkiv (Law Reports, Sweden)

RG-Entscheidungen das Reichsgerichts in Zivilsachen (Germany)

SvJT—Svensk juristtidning (Sweden)

TfR-Tidsskrift for rettsvidenskap (Norway)

UfR—Ugeskrift for Retsvaesen (Denmark)

¹ Savigny, System des heutigen Römischen Rechts, 1849, Vol. VIII, p. 32.

² Savigny, p. 17.

After the monks were expelled from France they settled in Tarragona, Spain, where they continued to make their liqueurs. The property of the order in France was forcibly placed under Government administration and sold, the proceeds going to the French Exchequer. The French administrator took it upon himself to transfer to the French company, which had taken over the monks' liqueur distillery at Chartreuse, the French trademark "Chartreuse" and later attempted to do the same in other countries. This gave rise to legal cases in nearly every country in the world. In every case the claim of the Government's administrator was rejected.

The German Reichsgericht, in its decision on the Chartreuse case, a came to the conclusion, with the aid of a literal interpretation of the German trademark law, that the right of ownership to a trademark could not have been transferred by means of the French legislation in question. The English decision, by the House of Lords, did not go into the special legal problem of trademarks but was based on the fact that the monks had acquired goodwill in England. The House of Lords held that it was not within the power of a foreign legislature to deprive the monks of the benefit of the reputation their liqueurs had acquired in England. Compared with this fact it was of secondary importance that the French law of July 1, 1901, could be interpreted as a penal law—a law of police and order—which was not considered to have extraterritorial effect. The Danish Maritime and Commercial Court (Sp. og Handelsretten) states briefly that the French law of confiscation cannot be considered to apply to rights or property in Denmark.

The Russian confiscation or socialization of property after the Bolshevik revolution in October, 1917, has provided a rich fund of legal precedent. By means of a series of decrees the Russian state confiscated insurance companies, corporations, business enterprises, freight boats, art treasures, and all other private property of value without making any payment to the former owners.

In this investigation we are interested only in the legal precedents which affected the question of whether the Russian emigrés, despite the Soviet Russian confiscations, continued to be considered the owners of their former

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² RG, Vol. 69, p. 1 (1908).

Lecouturier v. Rey. Law Reports, (1910) A. C. 262.

⁵ Lord Macnaghten: "To me it seems perfectly plain that it must be beyond the power of any foreign Court or any foreign legislature to prevent the monks from availing themselves in England of the benefit of the reputation which the liqueurs of their manufacture have acquired here or to extend or communicate the benefit of that reputation to any rival or competitor in the English market. But it is certainly satisfactory to learn from the evidence of experts in French law that the Law of Associations is a penal law—a law of police and order—and is not considered to have any extraterritorial effect."

⁶ UfR, 1911, p. 724. The verdict of the Maritime and Commercial Court does not seem to have been appealed.

⁷ In Denmark a new lawsuit was brought in regard to trademarks consisting of words because in the first lawsuit the decision concerned only the right to trademarks consisting of designs.

property. The problem first became relevant in deciding the question of who was the true owner of the property which the Bolsheviks had confiscated in Russia and later sold abroad. When it has concerned Russian assets abroad, this problem has not always arisen. Thus there seems to have been no question in any country of the right of private Russian emigrés to claims or other assets abroad. However, the problem has been quite different in the matter of assets which belonged to Russian banks or companies. Refugee owners and directors or other representatives of Russian companies everywhere have been told that a Russian company could not continue to exist abroad after it has ceased to exist according to Soviet law. In connection with the question of whether the foreign assets of Russian companies could be taken over by the representatives of the former shareholders, the courts have also often taken into consideration the question whether the confiscation transferred the company's assets to Russian state ownership.

In Germany there seems to have been very little sympathy with the demands of the Russian emigrés. All claims to property which was held in Russia at the outbreak of the revolution and later sold abroad have been unconditionally rejected.⁸ The German decisions do not give any definite information with respect to the Russian assets in Germany. In the most significant corporation case the emigrés defense was over-ruled merely on the grounds that the company had ceased to exist and the former shareholders are not entitled to make claims on behalf of the company. Moreover, there are great disparities in the arguments presented in the various cases. Thus it is sometimes stated that a court cannot reëstablish an original right to ownership once this has been legally changed. In other cases the court ruled that Soviet Russian law cannot be considered to violate ordre public since Germany, in the Treaty of Rapallo, of April 16, 1922, relinquished all demands for reparations which, because of previous measures undertaken by Russia, might have been owing to German citizens. Thus the Russian emigrés could certainly not be presumed to have a better legal position than German citizens.

Czarist Russia had had especially strong connections with France. Many Russian companies had French branches and large assets and liabilities in France. It is natural therefore that France became a second homeland for the Russian emigrés and that the French courts tried insofar as possible to satisfy their demands. The French position was not dictated by unselfish motives alone. It was also to the interest of France that Czarist Russian enterprises should wind up their activity and pay their debts in France.

The Soviet Russian confiscations were not considered by the French

⁸ See the special judicial decision concerning 15 Russian emigrants and Kunsthaus Lepke, Landgericht II Berlin, Zeitschrift für Ostrecht, 1929, p. 1366. See also Hanseatische Rechtszeitschrift, 1924, p. 749.

⁹ RG, Vol. 129, p. 98 (1930).

courts as depriving the emigrés of their rights in the case of assets within Soviet territory. Before the recognition of the Soviet Government this decision was based on the fact that Czarist Russian law was considered to be still valid and that no legal significance whatever should be attributed to the Soviet Russian measures. In the famous Optorg case the Tribunal Civil de la Seine 10 stated, in a judgment on December 12, 1923, that the Soviet Russian confiscation was a criminal act to which no significance should be The former owners were thus entitled to recover a consignment of raw silk which the Bolsheviks had sold to France. After the recognition of the Soviet Union on October 28, 1924, it has not been considered possible, without closer examination, to reject (rejeter en bloc) all Soviet Russian law, but the confiscations were now considered to be violation of ordre public. The Soviet Government's protest against the French court's decision to place the Ropit Company's 11 commercial fleet under a private administrator was rejected. It is true that the Ropit case was concerned with property which had never been under Soviet dominion. The company's ships had sailed from Odessa to Marseilles shortly before the Bolsheviks gained control of This situation was, however, accorded no significance, which also is emphasized in the legal literature.12, 13

The leading English legal case, Luther versus Sagor, was in progress during the period just preceding and just following England's recognition of the Soviet Union. The question concerned the ownership of a consignment of plywood from a warehouse which the Bolsheviks had taken in their confiscation of the Luther factory in Staraja Russa, and afterwards sold to the Sagor Company which imported the consignment to England. When the judge on King's Bench made his decision, in December 1920,14 the English Government had not yet recognized the Soviet Union. The judge therefore could not presume that the Soviet Government had the authority to deprive Luther of his property. When the case came before the Court of Appeal in April, 1931, 15 England had recognized the Soviet Government as Russia's de facto government. Under these circumstances, the judge could not consider the Soviet social measures as violating moral principles. it is immaterial that the vast majority of the English people repudiated Bolshevik methods. 18. 17 However, the fact that the Soviet measures were

¹⁰ Clunet, Journal du droit international, 1924, p. 133.

¹¹ Clunet, 1925, p. 391 (Tribunal de Commerce de Marseille), 1926, p. 667 (Cour d'appel d'Aix) and 1928, p. 674 (Cour de Cassation).

¹² Niboyet, Manuel de droit international prive, 2nd edition, 1928, p. 565, especially footnote 2.

¹³ The ordre public argument will recur in several other cases. See for example, Clunet, 1929, p. 115 and 1931, p. 400. See also Bartin, *Principes de droit international prive*, I, 1930, p. 60 ff. and III, 1935, p. 247 ff.; also Niboyet, p. 564 ff. and p. 614.

¹⁴ Law Reports (1921), 1 K. B. 456. ¹⁵ (1921), 3 K. B. 532.

¹⁶ Lord Bankes: "I do not see how the Courts could treat this particular decree (nationalization decree in question) otherwise than as the expression by the de facto government of a

not considered to be a violation of ordre public did not hinder the English courts from pronouncing, in the Jupiter Case, 18 that the socialization decrees did not cover property which at the time of the passing of the decrees was outside Soviet territory. The reason was that the question of transfer of ownership should be judged according to lex rei sitae.

The main problem in the Swedish decisions ¹⁹ has been the question of whether Czarist Russian companies should continue to exist abroad despite the fact they have ceased to exist in Russia. Therefore the decisions of the Supreme Court of Sweden (*Hōgsta domstolen*) in the questions which are of primary interest here are extremely scanty. The Court stated only that the Soviet Russian decrees could not be recognized as having legal effect when they concerned property outside Russian territory. ²⁰ In Sweden we have had a Russian epilogue in a series of cases which concerned Estonian boats. The question concerned the validity of the Russian nationalization measures after the annexation of the Baltic area in 1940. ²¹

The German anti-Semitic legislation has given rise to new problems in several fields of international private law. Especially in Sweden are the cases numerous. In this connection we shall, however, take up only those decisions which concern German compulsory control over Jewish property in Germany or in German-occupied territory.

In these cases the Swedish courts had to consider, among other things, a law, pertaining especially to Austria, passed on April 13, 1938, appointing administrators and supervisors (Bestellung von kommissarischen Verwaltern und kommissarischen Uberwachungspersonen); in addition they had to consider certain regulations of the same year concerning the elimination of Jews from industry and trade, as well as certain provisions in the German exchange legislation concerning the right of the authorities to take all necessary precautions in order to prevent the flight of capital.

civilized country of a policy which it considered to be in the best interest of that country. It must be quite immaterial for present purposes that the same views are not entertained by the government of this country, are repudiated by the vast majority of its citizens, and are not recognized by our laws." The same thoughts are expressed by Lord Scrutton: "I do not feel able to come to the conclusion that the legislation of a state recognized by my Sovereign as an independent sovereign state is so contrary to moral principle that the judge ought not to recognize it."

¹⁷ The same argument reappears in the case of *Princess Paley Olga* v. Weisz (1929), 1 K. B. 718.

¹⁸ The Jupiter, 1927, p. 250. The case concerned the ship Jupiter which belonged to the Ropit Company but which was surrendered by its captain to the representative of the Soviet Government in London. The ship was afterwards sold by the Soviet to an Italian company which was compelled by court action to transfer the ship to the Ropit Company's French agent.

¹⁹ NJA, 1929, p. 471; 1931, p. 351; 1932, p. 217 and 225; 1938, p. 567.

 $^{^{20}}$ From other Scandinavian countries may be noted following Danish cases: See UfR_r 1924, p. 860 and 893. See also UfR_r 1925, p. 260 H.

²¹ See NJA, 1941, B 306, 351, 1942, B 160-163, 1943, B 190-193, NJA, 1944, p. 264.

In a first series of cases ³² the Supreme Court of Sweden has presented a more thorough argument for the same legal principle which had been applied previously in the Russian cases. The compulsory administration which has been set up within the German Reich "cannot, considering the purport and objectives of this administration—and considering the general principles of international law with respect to territorial limits—be considered to apply to property which was already here in Sweden before the compulsory administration became effective." ²³

In these cases the Supreme Court of Sweden also considered whether the previous owner can claim to recover the property which was taken over by the compulsory administrator and later sent to Sweden. The Supreme Court of Sweden on this point followed the same principle as the English courts and rejected the claim of the former owner.²⁴

For those who had expected to find a unified point of view for judging foreign confiscation laws and other similar laws of compulsion this investigation of legal practice has been a disappointment. Even in cases where the same conclusions have been reached the arguments have not been the same.

The cases discussed here have concerned the question of the application of foreign laws which are built on an entirely different conception of society from that of the domestic law. One would have thought therefore that the courts primarily should have cited ordre public, which is a time-honored weapon of defense when one wishes to prevent the application of a foreign law which is incompatible with the legal principles of one's own country. This survey of legal precedents has, however, shown that this argument was used only in French courts.

There are several reasons for this. Naturally, the courts are unwilling to pronounce a moral condemnation of the legislation of another state with which their own state maintains friendly relations. This unwillingness appears most obviously in English law. After England recognized the Soviet Union de facto the English courts considered it impossible to view the Soviet Russian confiscations as action against public morality, despite the fact that the confiscations were repudiated by the vast majority of the English people. To the extent that the legal effect of the confiscations on English law were disclaimed this has been done on other grounds. It is also obvious that the ordre public argument cannot be used when a compromise with the foreign legal system is made and certain legal aspects of the confiscations laws are recognized. If some aspects of the confiscation law are rejected on this ground at the same time that other aspects are approved then one part of the decision is in conflict with the other.

Instead of making maximum use of the ordre public argument the approach frequently taken has been to apply the general principles of international

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²² NJA, 1941, p. 424. See also NJA, 1942, p. 385.

²³ Compare also NJA, 1942, p. 382 and 389. Danish cases: UfR, 1939, p. 588 and 919.

^{**} NJA, 1941, p. 424 IV.

private law. A judicial argument of this type was presented in the English Chartreuse case. The monks had acquired goodwill in England. It was not considered to be within the power of a foreign legislature to deprive them of the benefit of this goodwill. With this argument the English court seems to have intended to refer to the doctrine which is deeply rooted in Anglo-Saxon law that a right acquired under a foreign law should be recognized. That this doctrine has a very limited application to the cases in question is, however, obvious. It can be applied to the Chartreuse case where it concerned the right to a well-known trademark, but it cannot well be cited in the case of a dispute as to the better title to property which formerly was in the homeland of the refugee but was later transferred to the country where the legal action is brought shortly before the persecution began.

The doctrine that legal questions concerning property should be governed by lex rei sitae is more useful. We have found this thesis in the Danish Chartreuse case and in the English Jupiter decision; it is possible that it also was behind the Swedish decision dealing with the effect of German compulsory administration of Jewish property. However, this principle is not universally applicable. Its true sphere of application concerns immovable property; it can, perhaps, even be applied to movables, negotiable instruments and shares, but it cannot be applied equally well to mere rights of action. It would be just as natural to seek another starting point and ask the question whether a given person—for example, an agent appointed to administer a company—has authority to bind his principal. ciple of lex rei sitae therefore cannot be said to constitute more than a presumption so that a change of law concerning movable property might be judged according to the law of the country where the property was at the moment when the change of law was supposed to have taken place.26 '

In modern legal theory one also finds the thesis that the public law ²⁷ of other countries is not applicable in the present connection to the same extent as is the private law of other countries. Accordingly exceptions are made as respects public law from the principle of equality between foreign and domestic law which normally constitutes the working hypothesis of modern international private law. This theory has an advantage over the principle of ordre public in that it is not as pugnacious with respect to other countries. To what extent the theory of the special position of public law has been used as a basis for some of the decisions previously referred to is difficult to estimate. In the English Chartreuse case, however, it seems to have been an obiter dictum.

²⁵ An excellent survey of the Anglo-Saxon doctrine of vested rights has been given in Beale, A Treatise on the Conflict of Laws, 1935, Vol. 3, p. 1967.

²⁵ See, for example, Cheshire, Private International Law, 1938 (2nd edition), p. 431.

²⁷ The Swedish expression offentligrattsliga lagar refers to law which protects society; as distinct from private law (privatrattsliga lagar) which protects the individual.

The Swedish jurist Gihl ²⁸ recommends a very strict theory. According to Gihl public law never can be applied by the courts of another country. Gihl discusses primarily the law of confiscation and the law of requisition, which two types he considers to be of equal standing. Nevertheless, the theory is presented with a claim to validity with respect to all public law. That the country in which the case is brought never applies foreign public law does not mean that it has no legal effect. The court does not need to nullify the lasting results of public law which has already been executed. In the Swedish, as in English, cases, the principle has also been followed that the legal effects of administrative measures adopted by a foreign state are recognized when concerning property in its territory but rejected when property has been situated elsewhere.

Gihl's distinction between the application of foreign law and the recognition of its legal effect could, among other things, be related to an interesting observation concerning the inappropriateness of the statement that law has territorial limitation. It would be anomalous for a Swedish court to declare, on the basis of a Russian confiscation law, that a Russian refugee's belongings were Russian state property only because they were in Russia when the confiscation decree was passed. The refugee ought to retain, according to Gihl's ²⁹ apparent meaning, the title to his property if he succeeded in taking it with him from Russia before any confiscation measures were carried out by the Russian authorities. The court does not apply, according to Gihl, the foreign public law in the same way as foreign private law, even if it recognizes the legal consequences, where confiscation has actually taken place, with respect to property within the foreign country's own territory.

Gihl's theory is, however, in our opinion untenable. To begin with, the objection can be raised that certain cases might arise in which a Swedish court ought to refuse to recognize a foreign state's legal claim despite the fact that confiscation actually was carried out in the foreign state's own territory. How would the case be handled, for example, where a German administrator claimed articles of value which a German refugee had regained from the administrator and later had taken with him when he fled to Sweden? We shall have occasion to return to this question later.

The most important objection is, however, that Gihl's theory entirely lacks contact with Swedish common law. It is not difficult to find examples of cases where the Swedish courts have applied foreign public law in the same way that they have applied foreign private law. The best example is the American gold clause legislation which was used in the case of *Scandia* v. the Treasury.³⁰ Another example is a recent case concerning sequestration of several Norwegian boats in Göteborg.³¹ which had been the object of requisitions by the Norwegian state. This case also shows that Swedish courts

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²⁸ Gihl, "The State's Immunity before Foreign Courts;" SvJT, 1944, especially p. 256, 268 ff., and 278.

²⁹ Gihl, p. 285. Compare p. 264.

³⁰ NJA, 1937, p. 1.

n NJA, 1942, p. 65.

occasionally recognize the validity of the compulsory measures of foreign states despite the fact these measures were applied outside the state's own territory.

The thesis that public law has no extra-territorial effect has been set forth in a much more moderate form by the German writer Neumeyer, in his thorough investigation of international administrative law. According to Neumeyer, the thesis that public law is territorial in its application is merely a presumption. In a case dealing with private rights, the argument may well be just the opposite. The Swedish judge Bagge expresses the same point of view. 31, 34

This investigation has shown that the principles and theories of international private law have rather an indefinite character which is made obvious by the fact that there is frequently a free choice between one or the other of two principles. In spite of this it would be erroneous to presume that these principles give us no guidance. They constitute, in the course of time, crystallized experience with respect to intercourse between nations. The principle of lex rei sitae and the theory of the territorial limitation of public law are thus, among other things, an expression of a principle that a judge should not intrude in affairs of foreign states, but that, on the other hand, the power of the foreign state does not need to be extended beyond The principle of vested or acquired rights can, on the its own territory. other hand, be said to imply that the law is conservative in this respect and that the judge should not upset existing conditions without strong reason. None of these principles can claim to be more than a presumption that a certain norm of treatment is effective in the majority of cases. not always lead to the same result either; rather, it may happen that various theses can be cited in support of opposite solutions. Therefore it is hardly surprising that in modern international private law there is an attempt to find a release from the restraint of the old principles and to follow instead an "individualized" method.

In our opinion it is possible, however, to find a uniform guiding principle for judging the cases taken up here. This principle is to be found in the right of asylum.

It is customary for a country to provide domicile or asylum within its borders to political refugees from other countries.

²² Neumeyer, Internationales Verwaltungsrecht, Vol. IV, Alig. Teil, especially pp. 115 and 430.

³³ Bagge, "The International Effects of the American Gold Clause Legislation," *TfR*, 1937, p. 158. See also Bagge's *dicta* in *NJA*, 1937, p. 1, and 1942, p. 389.

The question of the application of foreign public law has also been discussed in Sweden by Nial in his recently published book, *Internationell formogenhetsrätt* (International Property Rights). In contrast to Bagge, Nial maintains that public laws need not necessarily have a special position. Instead, an investigation should be made for every separate law (or type of law) of whether the general principles of international private law are applicable or whether the special nature of the law makes it necessary to follow other principles in the choice of the law to be applied (p. 115).

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The question of whether a country should grant asylum is considered in international law to be a matter of internal concern. Every state is thus free to decide what protection it will provide. However, it has generally not been considered to be an unfriendly act toward other countries for a country to grant asylum to political refugees.

In Sweden the right of asylum has been recognized in those provisions of the law pertaining to foreigners which state that a foreigner who has fled from his country for political reasons cannot be forced to return to his home country or to another country where he does not have security against being sent back to his home country. The right of asylum has also been expressed in the law of 1913 dealing with the extradition of criminals which states that, with certain exceptions, extradition cannot be carried out by reasons of a political crime.

In our opinion, the fact that Sweden, like many other countries, provides a certain amount of protection for the property of political refugees is another expression of the principle of personal asylum. Thus, in the case of property, one could speak of the material aspects of the right of asylum.

Theoretically speaking, an asylum country like Sweden could protect political refugees against all measures undertaken by foreign lawmakers designed to deprive the refugees of their property in this country because of their special political position. The question of the moment at which and the way in which the property was brought to the asylum country should not in itself be considered of any importance. In our opinion, this principle ought to be set up as the rule.

Practical reasons make it desirable, however, to provide for certain exceptions to this rule. In case a sovereign country actually has carried out a measure which has transferred the right of control over the property of a refugee to an administrator or to some other official or semi-official agent Swedish leading cases follow the same rule as English common law and recognize the full legal efficacy of the compulsory measure. If such property has later been taken to another country an action to recover (action of conversion) has been rejected. The basis of this exception lies in international law and is closely connected with the ideas behind the conception of sovereignty.35 If one country wants to maintain friendly relations with another, its courts should not undertake, without very strong reason, to question the justification of the measures the foreign country applies within its own territory. Such treatment can injure the prestige of the foreign country and thus can easily lead to retaliation against the country providing The irritation would be especially strong in case the foreign country should not be able to sell goods to the asylum country because the goods in question had been seized from their previous owners. Disputes concerning such goods could continue for a long time after the end of the revolution and thus keep old wounds open. The rejection of the measures of the

35 Cómpare Foster, La thèorie anglaise du droit international privé, Académie de droit international, Receuil des cours, 1938, Vol. III, p. 462.

foreign state would also be detrimental to the merchants of the asylum country who want to continue business relations with the old firms and companies despite their transfer to new hands.

As mentioned above, Gihl is of the opinion that a court can never "apply" a foreign confiscation law. The refugee should, therefore, in Gihl's opinion, retain the right to his property if he succeeded in bringing it with him to the asylum country before the confiscation measures were carried out even if the property was in foreign territory when the confiscation law was passed. The same principle is defended by Nial. If protection for the property of refugees is considered an outgrowth of the asylum principle no special arguments are required for this reservation with respect to the exception mentioned.

Gihl's and Nial's reservation is, however, in my opinion, too narrow. The property of refugees should also be protected in certain cases when it already has been taken over by the administrators of the state but was later regained by the original owner, regardless of what means he might have used to regain it. If the country of asylum refuses to extradite political refugees who have escaped from prison or concentration camps and have been hunted by the police of the home country, the country of asylum should also refuse to extradite the property of the refugee irrespective of the fact that it may have been at one time in the hands of an administrator of the home country. According to international law, neither the former nor the latter can be considered as unfriendly acts against the foreign country. The deciding factor should not be whether the compulsory measures were carried out, but, rather, whether the property was brought here in connection with the escape.

It is uncertain to what extent the principles of the right of asylum will be followed in the future. It is already stated that Sweden and other neutral European countries will not grant personal asylum right to all political refugees who, after the termination of the present war, may be expected to try to come to these countries. If Sweden should refuse to grant personal asylum right to a certain group of refugees it would be consistent to refuse to protect their property. However, the regulations pertaining to personal and material asylum right need not necessarily follow each other. From a humanitarian point of view the personal asylum right is the most important one. Therefore it is conceivable that the person of the political refugee might be protected but his property extradited. The foreign state from which he has fled would then be entitled to redemand the assets which the political refugee has brought to this country.

The preceding survey has been concerned with political persecution that has resulted in a group of citizens being expelled from their home country and being deprived of their property. A closely related question is that of the results of wartime confiscation or requisition.

During the First World War property in belligerent countries belonging *Nial, p. 125.

to citizens of enemy countries was handed over to a custodian. The same thing has happened during this war. Similar compulsory measures have been undertaken with respect to property belonging to citizens of occupied countries. The results of such compulsory measures during wartime are of interest to us only insofar as the measures concern a neutral country. The problem arises whenever a belligerent country sells confiscated goods to a neutral country or when the belligerent country tries to acquire assets existing in a neutral country belonging to enemy private persons, firms, or companies in the enemy country or in occupied countries.

The question of the effects of compulsory measures directed against citizens of an enemy country has been touched on in a Danish case. The trademark Grammophon was registered in Denmark for a German company which in turn was a subsidiary of an English firm, and its manager was an Englishman. As a result of the German war legislation during the First World War the English manager was discharged and replaced by a German one. After the war both the English and the German managers tried to claim the right to the Danish trademark. The Danish courts were of the opinion that the English manager was still entitled to the trademark on the ground that the extraordinary measures adopted in Germany with respect to property belonging to citizens in the Allied countries should be considered to be limited to Germany.

The principle of asylum right must, in our opinion, also be applied when judging wartime compulsory measures. Nevertheless, it does not seem feasible to treat, as Gihl does, all foreign requisitions and confiscations in wartime in the same way. From the point of view of the right of asylum there is no reason to protect citizens of a foreign country against compulsory measures applied by the lawful government of their own country. sequestration case 39 the Supreme Court of Sweden has not hesitated to recognize the right of the Norwegian Government to appropriate the Norwegian ships in Göteborg. The question of protection against compulsory measures in wartime does not arise until the action of the belligerent country is directed against the citizens of an enemy country. If the principle of asylum right is applied, the same fundamental rule as that mentioned above is reached. Those persecuted are to be protected against all kinds of compulsory measures designed to deprive them of property which is in the neutral country, regardless of in what way and at what time such property was brought there.

It is debatable whether in this case the same exception should be made as ¹⁷ UfR, 1922, p. 473.

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³⁸ A similar case has also arisen in Germany. A Danish bank during the First World War had permitted a French administrator to collect assets which belonged to a German company in France. The case came up in Germany because the Danish bank had assets and the German courts had consequently jurisdiction over the matter in question. The decision was that the bank must repay the money; RG, Vol. 145 (1934), p. 16.

³⁹ NJA, 1942, p. 65.

with respect to political refugees. The problem is as follows: Is the country that provides asylum to recognize compulsory measures carried out within the sphere of power of the belligerent country or on the scene of battle when the confiscated property is later sold by the belligerent country or otherwise is brought to this country?

In the case of compulsory measures used during the war the problem is not the same as in the case of compulsory measures relating to political persecution. With respect to wartime compulsory measures consideration must be given to the question of whether the measure is consistent with international law. This has also been pointed out by Nial.⁴⁰

According to international law, confiscations, requisitions, and similar measures are treated differently depending on the place where the measure was applied. Thus a belligerent country has greater authority according to the rules of naval warfare than according to the rules of land warfare. On the sea a belligerent country is still entitled to seize private enemy ships and enemy goods as war goods. According to international law as expressed in the Hague Regulations of 1907, the belligerent is obliged to respect private property as a matter of principle. Land warfare regulations apply, however, only to measures in occupied countries. No generally accepted rules exist 41 for dealing with the right of a belligerent country to dispose of enemy private property within its own territory.

The asylum country should, accordingly, adopt different regulations depending on whether the confiscation is carried out at sea or on land. In the first case, the confiscation should be accepted; in the second case, not. A definite legal basis for overruling confiscation on land exists, however, only with respect to measures taken in occupied countries.

The fact that the asylum country refused to recognize confiscations carried out in occupied countries is, in reality, very satisfactory. The power of the belligerent outside its own territory is rather provisional in character; consequently it must be considered likely that sometime in the future such confiscations will be declared illegal. In a declaration of January 5, 1942, the Allied Governments gave a warning to neutral countries in which they reserved the right "to cancel all transfers or transactions of property, rights, or interests of any kind which either are in or have been in areas which have come under the direct or indirect control or ownership of enemy governments or which belong or have belonged to persons (unknown persons are included) living in the same areas." ⁴²

⁴⁰ Nial, p. 123.

⁴¹ See, for instance, Oppenheim, *International Law*, Vol. II, 1935 (5th ed.), p. 270, and Fauchille, *Traits de droit international public*, Vol. II, 1921 (8th ed.), p. 69.

⁴² The Norwegian Government has already passed a series of laws for this purpose; of particular importance is the law entitled *Provisorisk anordning om ugyldiheten av rettshandler m.v. som har sammenheng med okkupasjonen* (Provisional Act concerning the Invalidity of Legal Measures, etc., in connection with the Occupation). This law is dated December 18, 1942.

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WAR CRIMINALS

By QUINCY WRIGHT

Of the Board of Editors

The problem of war criminals has aroused controversy between those who insist that enemy persons guilty of acts which have shocked the conscience of mankind shall be punished ¹ and those who insist that the United Nations must observe principles of civilized justice.² Those principles require that an individual shall not be punished for an act, however shocking, unless the act was a crime under the law applicable at the time and place where it was committed (nulla poena sine lege),³ and unless the guilt of the individual has

¹ See Sheldon Glueck, War Criminals, Their Prosecution and Punishment, New York, 1944; Georg Schwarzenberger, "War Crimes and the Problem of an International Criminal Court," Czechoslovak Year Book of International Law, London, 1942, p. 67; George Finch, "Retribution for War Crimes," this JOURNAL, Vol. 37 (1943), p. 8; Proc. Am. Soc. Int. Law, 1943, p. 57; Report adopted by the National Executive Board of the National Lawyers Guild, Dec. 16, 1944, Lawyers Guild Review, Vol. IV (Nov.-Dec., 1944), p. 18; Albert G. D. Levy, "The Law and Procedure of War Crime Trials," Am. Pol. Sci. Rev., Vol. 37 (1943), p. 1053, note 3.

² C. C. Hyde, "Punishment of War Criminals," Proc. Am. Soc. Int. Law, 1943, p. 39; George Manner, "The Legal Nature and Punishment of Criminal Acts of Violence contrary to the Laws of War," this Journal, Vol. 37 (1943), pp. 407, 433. The American Members of the Commission of Responsibilities of the Paris Peace Conference (1919) were especially insistent on this point, quoting from the case of U. S. v. Hudson (7 Cranch 32, 1812), "the legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense" and commenting "what is true of the American States must be true of this looser union which we call the Society of Nations." They did not, however, regard the lack of international legislation defining war crimes an "insurmountable" difficulty (Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919, Violation of the Laws and Customs of War, Carnegie Endowment for International Peace, Pamphlet No. 32, 1919, p. 75). It should be noticed that President Washington in his neutrality Proclamation of April 22, 1793, and the Federal Courts in the cases of In re Henfield (Fed. Cas. 6360, 1793) and U. S. v. Ravara, (2 Dall. 297; Fed. Cas. 16,122, 1793) had earlier assumed that federal courts had a common law jurisdiction to punish offenses against the law of nations. See Q. Wright, The Enforcement of International Law through Municipal Law in the United States, Urbana, 1916, pp. 114-116.

³ "No one shall be convicted of crime except for violation of a law in effect at the time of the commission of the act charged as an offense, nor be subjected to a penalty greater than that applicable at the time of the commission of the offense." Report on Essential Human Rights, received by American Law Institute, February 24, 1944, Art. 9, said to be included in substance in the constitutions of thirty countries. Changes in the competence and procedure of the trial court after the offense was committed and judicial discretion in determining penalties are often regarded as permissible. (Beazell v. Ohio, 269 U. S. 167, 1925; "Retroactive Legislation," Encyclopedia of the Social Sciences.)

been established by a competent court utilizing fair procedures (due process of law).4 These principles have been characterized as "technical niceties." "bitter end conceptualism," or a "paralytic approach" by many who demand that grave offenses be adequately punished and the debacle of the "war criminal" procedures of 1919 be avoided.5

It may be that some of the more notorious offenders can properly be dealt. with by a political process as was Napoleon.6 While bills of attainder are forbidden by the United States Constitution and are considered obsolete in most constitutional systems 7 political procedures are still utilized by many countries for political offenses.8 Governments have often insisted that political criminals whose acts are considered hostile to their power or prestige, although not subject to extradition, be adequately punished by the country where the act occurred, even if its laws did not at the time ade-

"Everyone has the right to have his criminal and civil liabilities and his rights determined without undue delay by fair public trial by a competent tribunal before which he has had opportunity for a full hearing:" Essential Human Rights, Art. 7, said to be included in substance in the constitutions of fifty countries. This principle and that stated in note 3 together imply that there should be no unreasonable discrimination in the initiation of prosecutions of those probably liable under the law and that defenses available to the accused when the offense was committed should not be unreasonably altered. These implications, however, necessarily leave a margin of flexibility. The accused cannot object to a reasonable selectiveness in initiating prosecutions or to reasonable modifications of procedural technicalities between the time the offense was committed and the case is adjudged.

⁵ Glueck, p. 10. Frederick Kuh reported to the Chicago Sun from London on September 23, 1944, that members of Parliament were complaining that "the paralytic approach" of the United Nations War Crimes Commission was "making a mockery of the justice which free peoples are demanding be meted out to Germans guilty of outrages." See also the same journalist in P.M., Sept. 17, 1944, p. 3, and Samuel Grafton in Chicago Sun, November 2, 1944. A British writer warns against "strict interpretation of the letter of the law" and hopes "common sense will prevail" and "the common law of nations" will be applied by special courts if "technicalities" prevent the ordinary courts from applying it. Royal Institute of International Affairs, "Treatment of War Crimes," Bulletin of International

News, Vol. 22 (1945), p. 206.

Charles Warren in Proceedings of the American Society of International Law, 1943, p. 51; George Finch, in same, p. 57; Glueck recognizes the "right" of the United Nations to follow such a procedure (p. 126) but considers it inexpedient (p. 78). The American members of the Commission of Responsibilities (1919) objected to holding the Kaiser responsible "for violations of positive law" but not for "what may be called political offenses and to political sanctions" (work cited, p. 66). On treatment of Napoleon see Glucck, p. 223; Q. Wright, "The Legal Liability of the Kaiser," in American Political Science Review, Vol. 13 (1919), p. 127.

U. S. Constitution, Art. 1, Sec. 9; Art. 3, Sec. 3; C. H. McIlwain, "Attainder," in Encyclopedia of the Social Sciences.

8 Max Lerner, "Political Offenders," in same; V. V. Pella, La repression des crimes contre la personnalité de l'état, in Académie de droit international, Recueil des cours, Vol. 33 (1931), p. 671.

Political offenses are usually excluded from extradition. See Draft Convention on Extradition, Harvard Research on International Law, this JOURNAL, Vol. 29 (1935), Supplement, p. 107.

quately cover the offense.¹⁰ Such an offense has been regarded as an international delinquency ¹¹ and the punishment of those guilty as an international obligation of reparation,¹² consequently a state cannot excuse failure to carry out its obligation by the inadequacy of its domestic law.¹⁸

Whatever may be the situation in regard to the more notorious malefactors concerning whose acts there is no question, it is generally recognized that the principles of justice referred to should be observed in dealing with the thousands of lesser offenders. Otherwise some of the important objectives in punishing war criminals would be ignored.¹⁴ Evidence must be sifted and

10 "It is said that in the case of the Russian ambassador, when Lord Holt sat in the King's Bench, the offenders were, after conviction, detained in prison, from term to term, without judgment, till the Czar Peter was satisfied, the reason for this procedure being that the Czar would not have considered any sentence adequate short of death, which the court could not pronounce." McKean, Ch. Justice, in Respublica vs. DeLongchamps, Court of Oyer and Terminer at Philadelphia, 1784, 1 Dall. 111, 117; Moore's Digest, Vol. 4, p. 622. See also cases of attack on Legations in Peking by Boxers, 1900 (Moore's Digest, Vol. 5, p. 495); murder of Austrian Archduke at Sarajevo in 1914 (Naval War College, Int. Law Docs., 1917, p. 30); murder of Sir Lee Stack, Sirdar of the Sudan, in 1922; murder of Italian General Tellini in Greece, 1923 (Q. Wright, this JOURNAL, Vol. 18 (1924), pp. 536, 543); murder of U. S. Vice-Consul Imbrie in Iran, 1924 (Hackworth, Digest, Vol. 4, p. 710; E. C. Stowell, this JOURNAL, Vol. 18 (1924), p. 768; murder of King Alexander of Yugoslavia in France, 1934 (A. K. Kuhn, this JOURNAL, Vol. 29 (1935), p. 87). See also Q. Wright, Enforcement of International Law, p. 75; Clyde Eagleton, "The Responsibility of the State for the Protection of Foreign Officials," this Journal, Vol. 19 (1925), pp. 293, 310, and The Responsibility of States in International Law, New York, 1928, p. 184.

"Whoever offers any violence to him (a public minister) not only affronts the sovereign he represents, but also hurts the common safety and well-being of nations; he is guilty of a crime against the whole world." Respublica v. DeLongchamps, 1 Dall. 111, 116. See also U. S. note of Sept. 22, 1900 "in regard to the exemplary punishment of the notable leaders in the crimes committed in Peking against international law:" Moore's Digest, Vol. 5, p. 495.

¹² Above, notes 10, 11. The principle applies to offenses against aliens even when there is no political element involved. "The failure to prosecute those who are guilty of offenses against aliens constitutes an international delinquency and justifies the intervention of the alien's government:" E. C. Stowell, *International Law*, New York, 1931, p. 169. See also Harvard Research, *Draft Convention on Responsibility of States*, this JOURNAL, Vol. 23 (1929), Special Supplement, p. 166; Janes Case, U. S.-Mexico, General Claims Commission, 1927, p. 114; Moore's *Digest*, Vol. 6, p. 806.

¹³ Harvard Research, Draft Convention on Responsibility of States, Art. 4, as cited, p. 146; Eagleton, Responsibility of States, p. 15; Q. Wright, International Law in its Relation to Constitutional Law, this JOURNAL, Vol. 17 (1923), p. 241, and "The Outlawry of War" in same, Vol. 19 (1925), p. 80.

14 Some sociologists question whether such punishment can be rationally justified. Noting that "in the controversial realm of social policy we are tempted to judge our actions in terms of logical abstractions or sentiments and to reject the pragmatic test," and judging by past history, criminological theories, and the findings of sociology and psychology, C. Arnold Anderson concludes: "if we are seeking to assist in the abolition of war, the trial of defeated leaders by their conquerors is inappropriate. The justifications that may be offered for such trials do not touch the basic causes of war. Future leaders who might lead another war are not eliminated. The attitudes that the victors would have to adopt, in this day of mass democracy, in order to assume so heavy a responsibility contradict the conditions of inter-

laws interpreted to determine just who is guilty of what, and this should be done by competent courts applying applicable laws by fair procedures.¹⁵

√The term "war crime" has been used in military circles as synonymous with "violation of the law of war" 16 but in current official 17 and juristic 18

national relations upon which peace must rest. The defeated nations would not be conciliated. The trials would drive victor and vanquished farther apart than they were at the end of hostilities." ("The Utility of the Proposed Trial and Punishment of Enemy Leader's," Am. Pol. Sci. Rev., Vol. 37 (1943), pp. 1081, 1098-9). Philosophers and criminologists have differed as to the social justification for any criminal punishment (see F. H. Wines. Punishment and Reformation, New York, 1910, p. 281). The following objectives have been suggested for punishing war criminals. 1) Vindication of principles of civilized justice and promotion of the rule of law. The rule of law would not be promoted if those guilty of acts generally regarded as atrocities were not punished. 2) Prevention of further crimes or leadership by the criminals. There may be real danger of renewed leadership by the Nazi and Fascist leaders if alive or if martyrized. 3) Retribution satisfying popular demands of liberated peoples for revenge and of enemy peoples for a scapegoat. Peace would not be promoted by mass massacre of innocent enemy peoples or by indiscriminate branding of all enemy peoples as criminals thus reuniting them for a war of revenge. 4) Deterrence of potential war criminals in the future from committing similar offenses. Impunity of war criminals might encourage further leaders to try it again; (see Glueck, p. 16). These objectives seem to require scrupulous care for the principles of criminal justice and avoidance of identification of the war criminals with the enemy people or state i.e. symbolic indictment and conviction of the entire enemy population in the war criminal trials, and punishments which are not commensurate with the offenses. Anderson's criticism of such trials springs partly from his scepticism as to the possibility of realizing these conditions.

¹⁵ C. C. Hyde, "Punishment of War Criminals," *Proc. Am. Soc. Int. Law*, 1943, p. 39 and comments by E. D. Dickinson, same, p. 46. It is "better . . . to judge irreproachably a limited number of cases which can be held as good precedents than to obtain by means of hasty mass-trials a heap of convictions which in the eyes of the public would carry no weight and which would discredit the whole scheme. . . . The cases tried will form the basis of international criminal law, and it is essential that the proceedings should be of the highest standing." Royal Institute of International Affairs, *Bulletin of International News*, as cited, p. 205.

¹⁶ U. S., Rules of Land Warfare, 1940, Secs. 346, 357, and index; Major Willard B. Cowles "Trial of War Criminals in Military Tribunals," American Bar Association Journal, June, 1944.

17 In the Declaration of the Governments in Exile in London, on January 13, 1942, war criminals referred to persons responsible for "a regime of terror" in occupied territory as well as those who had violated the rules of war. Earlier (April, 1941) President Benes of Czechoslovakia had referred to the "political punishment of those who are responsible for this war" and President Roosevelt had denounced "the practice of executing innocent hostages" (Oct. 25, 1941) a statement in which Prime Minister Churchill concurred (October 27, 1941). The Moscow Declaration of November 1, 1943, referred to "unspeakable crimes and atrocities" the perpetrators of which would be sent back to the countries where their "abominable deeds" were done and would be "punished according to the laws of the liberated countries and of the free governments which will be created therein." It also referred to "major criminals whose offenses have no particular geographical localization" to be punished by "joint decisions of the Allies." On July 17, 1942, President Roosevelt said perpetrators of crimes against the Jews would be held to "strict accountability" and on March 24, 1944, "none who

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discussions it has acquired a wider connotation. Consequently, if principles of justice are to be observed, it is necessary to determine the system of law establishing the offense, the penalty, the jurisdiction, and the procedure for ascertaining guilt. Is this system the criminal law of some state or is it international law? If the former, over what offenses can a particular state exercise jurisdiction? If the latter, what crimes are defined and what jurisdictions and procedures are established by international law? phrase, "offenses against the law of nations" is used in the United States Constitution and elsewhere. 19 It has been suggested that it refers to acts of individuals contrary to the customary or conventional prohibitions of the law of war, to acts of individuals committed in one state in time of peace so injurious to another that diplomatic protests have been habitual, and to acts of individuals so injurious to the community of nations as a whole that jurisdiction has been habitually exercised by any state that acquires custody of the culprit. For convenience these three types of offenses "against the law of nations" may be distinguished as offenses against the law of war, the law of peace, and universal law.20

Before the applicability of national law and of these three types of international law can be discussed, attention must be given to certain objections

participate in those acts of savagery shall go unpunished." He included "all who knowingly take part in the deportation of Jews to their death in Poland, or Norwegians and French to their death in Germany are equally guilty with the executioners." On August 21, 1942, he referred to the "barbarous crimes of the invaders in Europe and Asia." Summarizing these statements on February 1, 1945, Acting Secretary of State Grew said that current discussions "provide for the punishment of German leaders and their associates for their responsibility for the whole broad criminal enterprise devised and executed with ruthless disregard of the very foundation of law and morality, including offenses wherever committed against the rules of war and against minority elements, Jewish and other groups, and individuals." (United Nations Information Office, War and Peacs Aims, Jan. 30, 1943, pp. 31, 116 and Dec. 1, 1943, p. 22; U. S., Department of State Bulletin, Feb. 4, 1945, p. 154-55).

who, in connection with the military, political, economic, or industrial preparation for, or waging of, war, have, in their official capacity, committed acts contrary to (a) the laws and customs of legitimate warfare or (b) the principles of criminal law generally observed in civilized States; or who have incited, ordered, procured, counseled, or conspired in the commission of such acts; or, having knowledge that such acts were about to be committed, and possessing the duty and power to prevent them, have failed to do so" (p. 37). This he says does not include violation of treaties, initiation of aggressive war, acts of members of armed forces in their "private, non-official capacity," or acts of resistance by individuals in occupied territory (war treason, espionage, etc.).

¹⁹ Art. I, Sec. 8, par. 10; U. S. v. Arjona, 120 U. S. 479, 1887.

of actual fighting, which are contrary to accepted rules of warfare" from "occupation crimes, committed in the course of belligerent occupation of enemy territory" by occupying forces against civilians, as murder, assault and theft (Military Occupation and the Rule of Law, New York, 1944, p. 47). He thus includes offenses against the law of war and against national criminal law. Glueck's definition (above note 18) seems to include offenses in both

which would, if accepted, reduce the prosecution of war criminals to very narrow margins. It has been suggested that war criminals cannot be punished under international law because that law binds only states and not individuals; that they cannot be punished by any authority other than their own state in so far as their state assumes responsibility for their acts; that they cannot be punished for any act permitted by the law of war in so far as they were acting as members of an armed force during war; and that a chief of state cannot be punished in any case. These defenses are all deductions from the theory of sovereignty and are less securely grounded in the tradition of international law than suggested by some modern writers.²¹

1. Individuals and International Law

In holding that individuals may be bound directly by international treaties if the parties to the treaty intended that result, the Permanent Court of International Justice brushed aside objections in principle to treatment of individuals as subjects of international law.²² This opinion suggests that individuals may be bound directly by any rule of international law, customary or conventional if the intent of the rule was so to bind them. That many rules of customary international law had that intent in their origin is clear from the tone of classical text writers ²³ and 18th century judges,²⁴ and from the role of natural law and natural rights in the development of inter-

these classes as well as some offenses against universal law. Hyde includes only offenses against the law of war (as cited p. 42). Dickinson suggests also offenders against universal law when he writes the "principles of criminal law generally accepted among the different nations are a proper source of international law" (as cited p. 48). Similarly Warren refers to "crimes against humanity" in addition to "violations of the rules of war." Levy (as cited p. 1069) includes "the employment of war as an instrument of policy" as well as violations of the laws of war."

n Oppenheim was especially insistent that individuals are not subjects of international law and that soldiers acting under state authority are exempt from foreign jurisdiction except for breaches of the law of war (International Law, Vol. I, Secs. 20, 289-92, 445). See also Manner, as cited p. 407. In 1925 the present writer expressed the opinion: "It may eventually be possible to hold individuals responsible under international law for committing acts productive of war in time of peace and war crimes in time of war. The accurate definition of such international crimes in addition to piracy and the establishment of an international court for their enforcement might be useful. Such a step, however, would involve a considerable modification of the present doctrine of independence of states" ("The Outlawry of War," this Journal, Vol. 19 (1925), p. 80).

²² Jurisdiction of the Courts of Danzig in the matter of Pecuniary Claim of Danzig Railway Officials, Publications, Ser. B, No. 15, p. 171. H. Lauterpacht (The Development of International Law by the Permanent Court of International Justice, London, 1934, p. 52) says of this opinion: "The postulated insurmountable barrier between the individual and international law is ignored."

²³ See especially Suares, De Legibus ac Deo Legislatore, II, c. xix, sec. 9, and comments by J. B. Scott, The Spanish Origins of International Law, Washington, 1928, p. 90.

²⁴ E. D. Dickinson, "Changing Concepts and the Doctrine of Incorporation," this Journal, Vol. 26 (1932), p. 254; C. M. Picciotto, The Relation of International Law to the Law of

national law.²⁵ That this tradition has not died out is indicated by the occasional opening of international tribunals and procedures to individuals ²⁶ and by the increasing number of modern writers who accept individuals as subjects of international law.²⁷

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The idea of a direct relationship of individuals to the world community has a long history. Classical and medieval concepts of natural law taught that individuals enjoyed certain natural or human rights which ought to be protected by the universal community of mankind and that they were bound by certain natural or human obligations which ought to be enforced by that community.²⁸ The application of this opinion in positive law was, however, controversial.

It was contended on the one hand that practical and theoretical objections could be raised against imposing liabilities, particularly criminal liabilities, upon corporate bodies such as states.²⁹ On the other hand it was feared that the unity of the state would be jeopardized if individuals were direct subjects of international law. Anarchy might result if the individual placed his duty to the world community ahead of obedience to his government and set himself up as the judge of his obligations superior to the judgment of his government.³⁰

This problem was debated in the Middle Ages and from this debate the

England and the United States of America, London, 1915, p. 76. The idea that National Courts are obliged to apply international law to the benefit of individuals in certain types of cases also exemplifies this theory. See below, n. 96, 97.

²⁸ Scott, as cited; E. D. Dickinson, Equality of States in International Law, Cambridge, 1920, p. 31; James Bryce, Studies in History and Jurisprudence, London, 1901, p. 602; Q. Wright, Mandates under the League of Nations, Chicago, 1930, p. 348. That the world community was considered by the classical international jurists to be a natural society, not only among states but also among individuals, is indicated by Vattel's statement: "Moreover, independence is necessary to a State; if it is to fulfill properly its duties toward itself and its citizens and to govern itself in the manner best suited to it. Hence, I repeat, it is enough that Nations conform to the demands made upon them by that natural and world-wide society established among all men." (The Law of Nations or the Principles of Natural Law, 1758, Carnegie Ed., Preface, p. 10a. See also Intro. Sec. 10, p. 5.)

²⁶ As the Central American Court of Justice, 1907; the proposed International Prize Court, 1907; and the Mixed Arbitral Tribunals set up after World War I. See E. M. Borchard, *Diplomatic Protection of Citizens Abroad*, New York, 1919, p. 17.

²⁷ J. B. Scott, "The Individual, the State, and the International Community," *Proc. Am. Soc. Int. Law*, 1930, p. 1; N. Politis, *The New Aspects of International Law*, Washington, 1928, p. 23; Q. Wright, *Research in International Law since the War*, Washington, 1930, pp. 32–33; A Study of War, Chicago, 1942, pp. 350–51, 909–11; Eagleton, *The Responsibility of States in International Law*, p. 221.

²⁸ Q. Wright, "The Outlawry of War," this JOURNAL, Vol. 19 (1925), p. 96; "Enforcement of Treaty Obligations," *Proc. Am. Soc. Int. Law*, 1926, p. 112; A Study of War, pp. 912–15, 941; Levy, as cited, p. 1052; Frederick L. Schuman, "The Dilemma of the Peace Seekers," American Political Science Review., Vol. 39 (1945), p. 16.

³⁰ Wright, Study of War, pp. 904, 910, 1007; Manners, as cited p. 429.

doctrine of sovereignty, first adumbrated by Bartolus in the 13th century, 31 emerged during the Renaissance.³² The controversy was especially concerned with the problem of just war. The responsibility of the individual conscience in this matter was first qualified by the suggestion that the individual committed no wrong if he obeyed his government in participating in an unjust war in case he was genuinely doubtful as to the injustice of the war.33 Later it was held that the individual was free to follow the judgment of his government without examining the justice of the war at all. Finally the doctrine of sovereignty was pushed to the extreme that the individual must follow the judgment of his government even when he was convinced that it was waging an unjust war.34 In some states this extreme view was moderated by certain exemptions for conscientious objectors, but on the whole the justice of war had become a problem of state policy, not of individual The general trend of the 19th and 20th centuries toward extreme nationalism and exaggerated emphasis upon state sovereignty was opposed to direct relationships between the individual and the world community. 35

It cannot be said that the victory of state absolutism has proved an unqualified blessing to the world. The influence of the individual conscience and of world opinion as sanctions of international law was diminished. It was hoped that the subjection of the individual to state jurisdiction and of the state to international responsibility would provide sufficient assurance of international order and human justice. But the hope was not realized when states too powerful to be coerced came under the control of governments not interested in justice.³⁶

✓ Governments have frequently shown a tendency to put expediency ahead of justice when their power has escaped the external influence of the balance of power, of international organization, or of supra-national institutions, and also the internal influence of constitutional structures, political traditions, or educated opinion. In such circumstances a renewed emphasis has often been given to the responsibility of the individual under standards of the civilization, sometimes referred to natural law, sometimes to religion. with the rise of ambitious monarchs on the fall of the ancient Roman empire, the theologians and jurists sought to hold men responsible under natural law and the law of nations. So also when ambitious monarchs again arose on the ruins of temporal papal authority in the fifteenth century jurists again sought to invoke natural law as the basis of individual responsibility to the community of nations. Today conditions unfavorable to a stable balance of power have arisen; international organization has lagged behind the needs of a shrinking world; supra-national churches, economies, and classes have been weakened; and internal constitutional, political, and moral checks have

¹¹ Angelo Sereni, The Italian Conception of International Law, New York, 1943, p. 58.

²² Q. Wright, Mandates under the League of Nations, p. 274 and Study of War, p. 899.

³³ Same, pp. 150-9 and 885.

³⁵ Study of War, pp. 1007-9.

^{*}Same, pp. 340-41 and 902.

²⁵ Mandates, pp. 340, 345, and War, pp. 943-4.

bowed before advancing totalitarianisms.²⁶² It is not surprising that the responsibility of the individual for world order and world civilization has again been invoked.³⁷

The concept of the individual as a subject of international law has been developed by numerous publicists, and has been recognized in official declarations and treaties which permit individuals of minorities and mandated territories to petition international institutions, which propose international tribunals before which individuals could be parties, and which suggest international procedures for protecting human rights and punishing offenses against international law.³⁸

2. Acts of State

It has frequently been asserted that if a state authorizes, or assumes responsibility for, the acts of an individual, the individual is relieved of legal responsibility except to that state. This doctrine is related to the principle of continental administrative law exempting individuals from the jurisdiction of the ordinary courts for various types of official acts, to the principle of United States Constitutional law by which courts accept the decisions of political organs on political questions, and to the British principle exempting persons from the ordinary law for a limited range of incidents known as acts of state. These principles were developed originally to assure the executive a certain freedom from the ordinary law in advancing what he conceived to be the public interest or security. Courts applied similar doctrines to the advantage of foreign states, however. Foreign diplomatic and consular officers were exempt from local jurisdiction for acts in pursuance of their official functions, and other persons, military or civil, were exempted from

^{36a} G. Niemeyer, Law Without Force, Princeton, 1941, p. 77; Q. Wright, "International Law and the Totalitarian States," American Political Science Review, Vol. 35 (1941), p. 741; A Study of War, pp. 338 ff., 760 ff. 1088; "International Law and the Balance of Power," this JOURNAL, Vol. 37 (1943), p. 97.

The demand that human freedom be protected by the world community, as well as that individuals be held responsible to the world community for war crimes, has appeared in many United Nations pronouncements. See Atlantic Charter, Arts. 4, 5; Declaration of United Nations, Jan. 1, 1942; Dumbarton Oaks Proposals, Chap. ix, Sec. 1; Report of Commission to Study the Organization of Peace on "International Safeguard of Human Rights," *International Conciliation*, No. 403 (Sept. 1944), p. 552.

²⁸ Q. Wright, "Human Rights and the World Order," *International Conciliation*, No. 389 (April, 1943), p. 238; above, note 27.

¹⁹ Buron v. Denman, 2 Ex. 167, 1848; W. Harrison Moore, Act of State in English Law, New York, 1906, pp. 32, 94, 128; Manner, as cited, p. 416.

⁴⁰ A. V. Dicey, Introduction to the Study of the Law of the Constitution, London, 1915 (8th ed.), pp. 335, 341-3.

^a Luther v. Borden, 7 How 1, 35, 1849; Charles G. Post, Jr., The Supreme Court and Political Questions, Baltimore, 1936, p. 17; Q. Wright, Control of American Foreign Relations, 172-4.

49 Moore, Act of State, p. 1.

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4 Harvard Research in International Law, Draft Convention on Diplomatic Privileges and

civil and criminal liability for acts in pursuance of the authority of another state, even acts confiscating property or authorizing homicide.

At first the existence, scope, and effect of an act of one state involved in litigation in another was treated as an issue of the law and policy of the first state. Had the sovereign state spoken and what had it said? If the government had observed the constitutional processes relevant to the circumstances, it was assumed that its act was the act of the state, and if individuals had acted in accordance with a clearly expressed intention of the state they were not individually responsible.⁴⁵

It has come to be recognized, however, that international law imposes limits upon the application of this doctrine. Thus Wharton writes,

To admit to its full extent the principle that we can not subject to our municipal law aliens who violate such laws under direction of their sovereign, would be to give such sovereigns jurisdiction over our territorial sovereignty.⁴⁶

From this he deduced that the act of the state had to be justifiable in international law or the agent would not be exempt.⁴⁷

In other words, an act of a government is not an "act of state" when it attempts to authorize an individual to do something beyond the competence of the state under international law. With this rule war criminals would not be able to escape liability for their acts beyond the competence of the Axis states even though authorized by Axis governments.

3. Acts during war

During the 18th and 19th centuries, a "state of war" came to be considered a situation like the duel in which both parties were equally entitled to pursue their interests by force irrespective of their responsibility in initiating hostilities. Thus acts during a state of war were to be judged, not by normal international law, but by the abnormal law of war.⁴⁸

While in all ages some have conceived war as a duel between princes or states, 49 the prevailing view of war in the middle ages and among the classical writers of international law was different. The just and unjust side were distinguished by consideration of the origin of the hostilities and the motives

Immunities, Art. 18 and Legal Position and Functions of Consule, Art. 21: this JOURNAL, Vol. 26 (1932), Supplement, pp. 97, 338.

[&]quot;Moore, Act of State, p. 120.

[&]quot;See Daniel Webster, Sec. of State, in McLeod Case, in same, p. 128 and J. B. Moore, Digest, Vol. 2, p. 25.

⁴⁰ Digest of International Law, Vol. I, p. 67.

⁴⁷ See People v. McLeod, New York, Hill 377, and Greville's *Memoirs*, 2nd ser., Vol. I, p. 384, cited in Wharton's *Digest*, Vol. I, Sec. 21; Moore, *Act of State*, p. 130; below, note 72.

 ⁴⁸ Q. Wright, Study of War, p. 891; "Outlawry of War," this JOURNAL, Vol. 19 (1925),
 p. 75.
 49 Q. Wright, Study of War, p. 877.

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of the participants, and impartiality by outside states was not considered proper if the position of the parties was established.⁵⁰

Recent international instruments have again prohibited resort to hostilities in all or in certain circumstances, and it has consequently been necessary to distinguish between the side which has violated these obligations and its victim. It has been suggested that while illegally initiated hostilities may, through general recognition, become a "state of war" in which both sides are legally equal, this cannot be presumed. Consequently, in the absence of such general recognition outside states are free to differentiate in the treatment of governments engaged in hostilities, treating the initiators of the hostilities as "aggressors" and the victims as "defenders," with very different rights and duties.⁵¹ The aggressors have been said to have none of the traditional belligerent rights in respect either to the enemy or to third states except those of a humanitarian character. The defenders, on the other hand, are said to enjoy all of the traditional rights of belligerents against the enemy and in reference to third states.⁵²

With this conception individuals would not be able to justify acts of violence on the ground that they were permissible during a "state of war" unless the existence of a "state of war" had been generally recognized. Acts of war with an intent to initiate a "state of war" or even declarations of war, though they might establish the existence of war for purposes of domestic law of the state, would no longer in themselves initiate a "state of war" equally permitting the participating states to engage in hostilities against each other. However, humanitarian considerations and possibilities of retaliation would demand that hostilities on a large scale, even though not implying all the consequences of a "state of war," be considered de facto war, as have insurrections and civil wars of the past, entitling both belligerent parties to the benefits of many of the rules of war. Thus "for an act done in accordance with the usages of civilized warfare under and by military authority of either party" an individual who acted under such authority would not be liable. 522

4. Chiefs of State.

The American members of the Commission of Responsibilities of the Paris Peace Conference (1919) insisted that the former Kaiser was not amenable to a foreign jurisdiction. While they agreed that "from the moral point of view, the head of a state, be he termed emperor, king, or chief executive, is

⁵⁰ Same, p. 885; "Changes in the Conception of War," this JOURNAL, Vol. 18 (1924), pp. 757, 764.

^{al} Q. Wright, "The Present Status of Neutrality," this JOURNAL, Vol. 34 (1940), p. 403; Study of War, pp. 892-94; below, note 133.

⁵³ BudaPest Articles of Interpretation, International Law Association, 38th Conference, 1934, p. 66; Harvard Research in International Law, *Draft Convention on Aggression*, this Journal, Vol. 33 (1939), Supplement, p. 827.

Freeland v. Williams, 131 U. S. 405, 416, 1891; below, note 74. See also Harvard Research, *Draft Convention on Aggression*, Art. 14, as cited, p. 905.

responsible to mankind" from the legal point of view they denied that "the head of a state exercising sovereign rights is responsible to any but those who have confided those rights to him by consent expressed or implied." Only the Japanese members of the Commission concurred in this dissent and the Treaty of Versailles arraigned the ex-Kaiser for "a supreme offense against international morality and the sanctity of treaties" and provided for a tribunal of five judges appointed by the Principal Allied and Associated Powers to try him (Art. 227). The refusal of the Netherlands, in which he had taken refuge, to extradite him prevented the carrying out of this provision.

There appears to have been considerable confusion both as to the scope of this immunity and the jurisdictions in which it applies.⁵⁵ The defense that the individual is a sovereign or chief of state undoubtedly prevents prosecution under local criminal law applicable in time of peace. This immunity has been accorded to the chief of state even for acts which cannot be regarded as acts of state, such, for instance, as breach of promise while travelling incognito in foreign territory.⁵⁶ The immunity flows from the identification of the ruling chief of state with the state itself ⁵⁷ and the rule of international law that one state cannot be sued in the courts of another without its consent.⁵⁸ The latter rule has been variously attributed to the doctrine of the independence and equality of states, to international comity and reciprocal interest, and to the difficulty of enforcing judgments against a foreign state through judicial procedures.⁵⁹ International comity, however, would not apply between belligerents and there would be no practical difficulty in enforcing a criminal judgment against a chief of state who is actually in the

- Seymour, What Really Happened at Paris, New York, 1921, p. 237; Glueck, p. 121.
 - 4 Report of Commission of Responsibilities, p. 80.
 - 55 Q. Wright, "The Legal Liability of the Kaiser," Am. Pol. Sci. Rev., Vol. 13 (1919), p. 120.
 - Mighell vs. Sultan of Johore, 1 Q. B. 149, 1894.
- ¹⁷ Harvard Research in International Law, Draft Convention on Competence of Courts in Regard to Foreign States, this JOURNAL, Vol. 26 (1932), Supplement, pp. 476–79. The American Member of the Commission of Responsibilities (1919) asserted "that in the exercise of sovereign powers which have been conferred upon him by the people, a monarch or head of state acts as their agent; that he is only responsible to them; and that he is responsible to no other people or group of people in the world" (pp. 76–77).
- 58 Harvard Research, Competence of Courts, Art. 7, p. 527. The American Members of the Commission of Responsibilities (1919) said: "The essence of sovereignty consists in the fact that it is not responsible to any foreign sovereignty" (p. 76). The majority of the commission, however, referring to "the alleged immunity, and in particular the alleged inviolability of a Sovereign of a State," said: "But this privilege, where it is recognized, is one of practical expedience in municipal law, and is not fundamental. However, even if, in some countries, a Sovereign is exempt from being prosecuted in a national court of his own country the position from an international point of view is quite different" (p. 19).
 - 59 Harvard Research, Competence of Courts, Art. 7, as cited, p. 527.

custody of the court. The independence and equality of states appear, therefore, to be the basis of the rule in so far as it applies to the problem in hand. It is assumed that the chief of state is so identified with the state, that an action against him must be regarded as an action against the state, and that if proceeded with the state's independence and equality would be impugned. There would, however, be no such impropriety in an action against an ex-chief of state, if the act for which he was tried was not an "act of state." In Nor would the argument apply to proceedings in a tribunal which derived its authority not from a state, but from the community of nations as a whole. Furthermore, the increasing acceptance of the principle that even the state can be sued for acts not within its governmental capacity of acts performed by it through governmental corporations araises a doubt whether the personal immunity even of a ruling sovereign should apply to acts not of a governmental character.

It has been suggested that in principle acts of the chief of state or the government beyond the powers of the state under international law should not be regarded as acts of the state on the theory that a corporate body, such as a state, is a creature of law and consequently acts in its name contrary to law are not to be considered its acts but acts of the individual committing them. This suggestion is not supported by practice in regard to the civil responsibility of the state to repair injuries resulting from the negligence or wrongful acts of its agents under color of state authority, but in respect to criminal liability it commands some support. With such a doctrine, an officer should be criminally liable, even in foreign national courts, for acts ostensibly in his official capacity but beyond the state's competence as defined by international law. The symbolic significance of the chief of state, however, makes it difficult to distinguish an action against him from an action against the state.

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⁶⁰ This was the basis of the American dissent in 1919; work cited, pp. 61-66, and above, note 57.

of a state actually in office and engaged in the performance of his duties. They do not apply to a head of a State who has abdicated or has been repudiated by his people. Proceedings against him might be wise or unwise, but in any event they would be against an individual out of office and not against an individual in office and thus in effect against the State" (same, p. 66). The British Court of Appeal treated the property of the ex-Tsar of Bulgaria as private enemy property during World War I. (In re Ferdinand, 1 Ch. 107, 1921.)

[🗠] Above, note 58

Chief Justice Marshall suggested, in the case of the Schooner Exchange that in certain circumstances "a prince . . . may be considered as so far laying down the prince, and assuming the character of a private individual" (7 Cranch 116, 1812). See also Harvard Research, Competence of Courts, Arts. 9-13.

⁶⁶ Above, notes 46 and 47; Q. Wright, Study of War, pp. 911-15; Levy, as cited, p. 1054.
^{65a} The prince tends to be something more than an agent of the state: see Q. Wright, Study of War, pp. 346, 900.

5. Offenses against national criminal laws

To what extent can states invaded or occupied by the Axis armies proceed against members of enemy forces or local quislings for acts committed in their territories or against their interests during the hostilities?

In addition to the limitations upon the criminal jurisdiction of a state established by its own law, the competence of the state to punish some or all such offenders has been questioned on the grounds that a state cannot exercise criminal jurisdiction for acts committed outside its territory or in portions of its territory occupied by the enemy, that members of enemy armed forces acting in the name of their state are immune from local jurisdiction, that soldiers acting under superior orders are not personally liable, and that chiefs of state cannot be subjected to the jurisdiction of foreign courts.

While it is often held that a state must show a positive authority from international law or treaties for any exercise of criminal jurisdiction over aliens beyond its own domain or its ships at sea, it was held by the Permanent Court of International Justice in the case of the *Lotus* that:

Restrictions upon the independence of states cannot be presumed . . . all that can be required of a state is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty . . . The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty. 66

There appears to be a general rule of international law forbidding states to exercise criminal jurisdiction over acts committed by aliens in foreign territory but there is an exception if the act was directed against the security of the state and was not protected by the law of the state where committed.⁶⁷ Crimes committed in Germany by Germans might, therefore, apart from other defenses, be prosecuted in Belgium, for example, if directed against Belgium security unless German law expressly permitted the act. The exception is an application of the doctrine of "act of state," generally held to be a good defense in foreign courts in respect to acts committed in accord with the law of a foreign state in its own territory.⁶⁸

It seems clear that apart from immunities explicitly defined by interna-

⁶⁶ Publications, Ser. A, No. 10, 1927.

⁶⁷ Harvard Research, Draft Convention on Jurisdiction with Respect to Crime, Arts. 7, 8, this JOURNAL, Vol. 29 (1935), Supplement, pp. 543, 561. The liability of prisoners of war for "crimes committed against the captors army or people" before he was captured has been recognized irrespective of the place where committed: Lieber's Code, Art. 59, Moore's Digest, Vol. 7, p. 220; Ernst Fraenkel, Military Occupation and the Rule of Law, New York, 1944, p. 49.

⁶⁸ Thus confiscations of property by foreign governments, within their own territories, have been held to give good title. Luther v. Sagor, 3 K. B. 532, 1921. See also below, note 75.

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tional law or treaty, a state can exercise criminal jurisdiction throughout its domain. While hostile military occupation suspends the exercise of that jurisdiction in the occupied territory, the existing criminal law continues during occupation except in so far as modified by explicit acts of the occupants necessitated by considerations of order and safety. If the occupation is the consequence not of legal war but of an illegal aggression even this exception would not apply. On termination of the occupation the de jure government can, therefore, apply its pre-existing law to acts occurring in the occupied area during occupation except in so far as a lawful occupant may have superseded them by the exercise of war powers or as the individual enjoyed some other immunity under international law.

It also seems clear that members of occupying forces enjoy no immunity from local criminal law except for acts which can be considered acts of state. There has been a difference of opinion whether "acts of state" can cover only acts of individuals which the government could legally authorize, 72 or any such acts for which the state had in fact assumed responsibility, 73 or even any act whatever of a person acting under the color of the state's authority. 74

- 69 Harvard Research, Jurisdiction with Respect to Crime, Art. 3, as cited, p. 480.
- ¹⁰ Hague Regulations, Land Warfare, 1907, Art. 43. The present conception of military occupation does not involve a temporary transfer of sovereignty and even if it did the existing civil and criminal law would continue until expressly changed by the succeeding sovereign: Fraenkel, pp. 51–52.
- ⁷¹ Above, note 52. Belgian courts assumed jurisdiction under Belgian law over acts by Germans during the occupation of Belgium in World War I on the theory that, because of Belgian neutralization, Germany was violating international law in being there. Fraenkel, p. 55.
- ⁷⁸ Thus excluding breaches of the law of war (note 76 below) and acts outside the state's jurisdiction (notes 47 above and 75 below).
 - 73 As suggested by Webster in the McLeod case, Moore's Digest, Vol. 2, pp. 25, 29.
- "4 Webster seemed to go that far when he said in the McLeod case: "That an individual, forming part of a public force, and acting under the authority of his Government, is not to be held answerable as a private trespasser or malefactor, is a principle of public law sanctioned by the usages of all civilized nations, and which the Government of the United States has no inclination to dispute" (Moore's Digest, Vol. 2, p. 25; Oppenheim, International Law, Vol. I, Sec. 445; Manners, p. 422; Lord Atkins, The Times, London, Dec. 30, 1943). Fraenkel (p. 49) says the Anglo-American view is that "courts of formerly occupied territory have no jurisdiction over dismissed members of the occupying army" for alleged crimes during the occupation, citing Coleman vs. Tennessee, 97 U. S. 509, 1878, Dow vs. Johnson, 100 U. S. 158, 1879, and Freeland vs. Williams, 131 U.S. 405, 1891. These cases if considered with Ford v. Surget, 97 U.S. 594, 606, 1878, give very weak support to this position. See Moore's Digest, Vol. 7, p. 177. Only in the Coleman case was a criminal act involved. A Union soldier had committed a murder in Tennessee during the occupation of that state by Union forces and had been convicted by court martial. The judgment, however, had not been carried out and he was tried and found guilty by the Tennessee court after the war, his case coming to the Supreme Court of the United States on writ of error. Justice Field speaking for the Court held that under the law of war the occupants' military tribunals have exclusive jurisdiction over their soldiers. In a strong dissenting opinion, Justice Clifford argued that the offense against United States Military law and the offense against Tennessee crimi-

The prevailing view appears to permit this defense for soldiers only if acting in the state's own territory, on the high seas, or on foreign territory where their government by virtue of war, defense necessity, custom, or agreement was free to send them. Thus if the occupation were permitted by the existence of a "state of war" soldiers would be immune from the local jurisdiction at least in so far as they acted in accord with the law of war.

The defense of the individual that he acted under superior orders is also an aspect of the concept "act of state." Criminal law does not ordinarily recognize that an individual's guilt is mitigated by the fact that he was asked

nal law were different and that since the U.S. Army had apparently abandoned the case the state could exercise jurisdiction over the crime against its law. The other three cases were civil actions for damages because of property destroyed by soldiers or civilians under military orders during the Civil War. Justice Field wrote the opinion in Dow v. Johnson, which concerned such destruction by a Union officer, and exempted him from liability, using the same argument as in the Coleman case. Clifford again dissented, joined by Miller. In the other two cases, which dealt with the destruction of property under Confederate military authority, a different line of argument was taken, acceptable to the dissenting justices. The court held that the Confederate armies enjoyed belligerent rights and that persons were not liable for acts under military order if in accord with the law of war. Justice Harlan wrote the opinion in Ford v. Surget and Clifford concurred. Justice Miller wrote the opinion in Freeland v. Williams and Harlan dissented, but on the ground that the state court had jurisdiction to decide whether the act in question was permissible under the law of war and that the Supreme Court ought not to question its judgment on the matter. The doctrine of the cases was thus stated by the court (p. 416): "Ever since the case of Dow v. Johnson, 100 U. S. 158, the doctrine has been settled in the courts, that in our late Civil war each party was entitled to the benefit of belligerent rights, as in the case of public war, and that, for an act done in accordance with the usages of civilized warfare, under and by military authority of either party, no civil liability attached to the officers or soldiers who acted under such authority." Coleman v. Tennessee was not mentioned and it appears that the court had silently abandoned the broad immunity there set forth.

⁷⁶ In recognizing the immunity of a Venezuelan general the court was careful to confine it to acts done in his own territory. (Underhill vs. Hernandez, 168 U. S. 250, 1897, Moore's Digest, Vol. 2, p. 31.) Chief Justice Marshall, in the case of the Schooner Exchange confined the immunity to cases where custom or agreement justified the public vessels or forces being where they were (7 Cranch 116, 139, Moore, Digest, Vol. 2, p. 399). Though Webster said the question of the immunity of McLeod because of his status as a British soldier and the question of the propriety of the British attack on the Caroline in United States territory were "essentially distinct and different" (Moore, Digest, Vol. 2, p. 25) this was denied by Calhoun, by the New York Court, and by Wharton, all of whom agreed that McLeod would not be entitled to immunity unless the British force could justify its presence in New York by a necessity of self defense: notes 46, 47 above, and Moore, Vol. 2, p. 27. See also Horn vs. Mitchell, 223 Fed. 549, 232 Fed. 819; Hackworth, Digest of International Law, Vol. 2, p. 406; Hyde, International Law, Vol. I, p. 435; Fraenkel, pp. 51–2.

That immunities of soldiers applied only to acts of "legitimate war" was insisted upon in Underhill vs. Hernandez (above); see also Mitchell v. Harmony, 13 How 115; Q. Wright, Control of American Foreign Relations, pp. 169, 299. According to Francis Wharton "Belligerent rights when pleaded in the civil courts as a defense, can not be set up to protect acts which are outside of legitimate warfare": Treatise on Criminal Law, Philadelphia, 1880, Sec. 1800 (Vol. 2, p. 543).

or ordered to do the act. Instead it holds both the ordered and orderer guilty. Only if the superior was competent to act for a state can his order give an immunity against criminal prosecution and this competence may be doubted when the orderer transgresses the powers or obligations of his state under international law.⁷⁷

The defense that the individual is a chief of state would prevent prosecution under the local criminal law applicable in time of peace but would not prevent such prosecution of an ex-chief of state except for acts which he committed while chief of state and which can be regarded as acts of state. The While it may be contended that all acts of a chief of state are acts of state this would not follow, if he is regarded merely as an agent of the state, in respect to acts involving criminal liability and beyond the competence of the state under international law or respecting acts of a private and non-governmental character. There appears to have been considerable confusion between the defense based upon "act of state" and that based upon sovereign immunity. The first protects an ex-official for acts which he had committed in his official capacity to but the latter protects only the state itself and an actual chief of state. Ex-chiefs of state can claim only the former immunity.

The states whose territory has been occupied can undoubtedly proceed under their own laws against many war criminals, especially local quislings. Others whose offenses have been committed outside the territory and were protected by local law or, according to the practice of some states, under responsibility of their state, could not be thus dealt with. If the theory is adopted that the hostilities initiated by the Axis powers are not war in the legal sense but illegal aggression it may be held that these powers did not enjoy the normal rights of belligerent occupation and consequently were incapable of interfering with the regular applicability of the criminal law of the land. Their troops had no right under international law to be in the occupied territories at all. With this interpretation the liberated states would be competent to proceed against enemy individuals for all acts in violation of their criminal law, irrespective of occupation legislation or assumption of responsibility by the occupying Axis governments.⁸²

Even though war criminals are proceeded against under the ordinary criminal law of the state the offense may still be regarded as political by a state to which the culprits have fled and such states may refuse extradition because of the usual exception of "political offense" in extradition treaties. A political offense is an offense committed under the responsibility of a state or a de facto government or group operating with political objectives. Even

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¹⁷ See Calhoun's comment on the McLeod Case, Moore's *Digest*, Vol. 2, p. 27, and notes 75 and 76 above.

¹⁸ Above, note 61.

⁷⁹ Above, notes 63, 64; but see 65a.
80 See Underhill vs. Hernandez, above.

⁸¹ For trials of ex-chiefs of state see Q. Wright, "Legal Liability of the Kaiser," as cited.

^{*} Above, note 52.

though it might be held in law that the plea of "act of state" could not exempt the offenders from prosecution in foreign courts, yet, if in fact the individual had acted to promote the political purposes of the Nazis, his act might be considered a "political offense" as understood in the normal practice of extradition. 83

· 6. Offenses against the law of war

Acts committed in violation of the law of war constitute "war crimes" in a narrow sense. These are of two types. Acts of sabotage, espionage, or sedition committed by enemy soldiers or civilians in the states territory or territory occupied by it, though called "war crimes" 84 are usually committed with patriotic motives under orders or with the approval of the government to which the persons committing them owe allegiance. The belligerent in whose behalf such acts are committed is under no obligation to prevent them but is free to encourage or even to order them. 85 They are, however, so dangerous to the enemy that the latter is permitted by international law to punish them if the perpetrater is caught in the act. Such acts are not "crimes" in the usual sense and the execution of persons committing them is rather an act of war than an act of justice.88 This is indicated by the fact that such persons cannot usually be executed or otherwise punished unless caught in the act. The Hague Convention provides that a spy who returns to his lines is entitled to the treatment of a prisoner of war if subsequently captured.87 Civilians who rise against the enemy in occupied territory may be punished by the occupant at the time, but if their action is successful in driving the enemy out they cannot subsequently be punished.88 The United Nations cannot punish acts of this kind after the fighting is over on the basis of the law of war.

Very different are acts of cruelty, perfidy, or vandalism forbidden by the rules of war. Among these war crimes are use of forbidden weapons; maltreatment of sick, wounded and prisoners; abuse of the Red Cross or flags of truce; breach of parole or armistice; execution of hostages; massacre of

²⁵ See Lawyer's Guild Report, as cited, p. 20. Many neutral states have actually declared that they will not give asylum to persons guilty of atrocities, *Department of State Bulletin*, Vol. 12, No. 294 (Feb. 11, 1945), p. 190.

Glueck excludes such acts from his definition of war crimes (p. 190, note 2). See Oppenheim, *International Law*, Vol. 2, Secs. 252, 254-56; U. S. Rules of Land Warfare, 1940, Secs. 202, 204-8, 344, 348-54.

²⁵ Oppenheim, Sec. 162; U. S. Rules, Secs. 38, 203.

⁸⁵ Oppenheim, Secs. 254-56; U. S. Rules, Secs. 123, 203, 212, 348-50.

⁸⁷ Hague Regulations, Arts. 30, 31; U. S. Rules, Sec. 212.

^{*}S Hyde, International Law, Vol. 2, p. 365. While the U. S. rules say that "it is not necessary for traitors to be caught in the act in order that they may be punished" (Sec. 213) this seems to apply to treason by members of U. S. forces (Sec. 205) and may be applied to enemy nationals guilty of "war treason" only in so far as consistent with the "unwritten laws of war applicable to occupied enemy territory" (Sec. 205 c).

nonresisting civilians or of enemy soldiers who have surrendered; pillage; destruction of merchant ships without putting the passengers and crew in a place of safety; and bombardment of undefended places, of protected buildings, or of nonmilitary objectives. War crimes in this class should be punished by the state whose soldiers commit them and may be punished by the enemy at any time the guilty individual is captured, even after the war. Such offenses are ordinarily dealt with by national military commissions. The Treaty of Versailles (Arts. 228–30) required Germany to hand over persons accused of such offenses for trial in allied "military tribunals" but Germany refused to carry out the provision. Arrangement was made for trials by a German tribunal set up at Leipzig and a few persons were found guilty. Of

Belligerents are undoubtedly permitted by international law to try such offenses in military commissions whose jurisdiction depends not only on the place in which the act was committed or the nationality of the offenders but also on the nature of the offense. The act must be a breach of the law of war committed in connection with a war engaged in by the state establishing the commission. Acts of that state's own forces may be tried in such a commission although they are more commonly dealt with by courts martial administering national military law. Acts of enemy forces or civilians injurious to the state establishing the commission or its nationals, or committed on its territory may also be tried in such a commission.

A state cannot, however, try in its military commission acts committed by the forces of its ally, or of an ally of its enemy with which it is not at war. A more complicated situation arises if the act is committed by enemy forces in connection with hostilities against an ally. Could, for example, a United States Military Commission proceed against German forces for breaches of the law of war against Norwegians in Norway? It might be held that it could if the act had been committed after the United States had entered the war on the supposition that the act was connected with the war of the United States against Germany. ⁶³

⁸⁹ U. S. Rules, Sec. 347; Manners, pp. 420-25.

⁹⁰ Royal Institute of International Affairs, Bulletin of International News, Vol. 22 (1945), p. 95; Glueck, p. 19. The offenses are listed in Commission of Responsibilities, 1919, p. 29-57.

⁵¹ Cowles, as cited; Manners, 423. U. S. law clearly permits the punishment of prisoners for war crimes committed anywhere: above, note 67.

⁹² Opinion of Am. Members, Commission of Responsibilities, 1919, p. 70; Ex parte Quirin, 317 U. S. 1, 1942; Cowles, as cited.

⁹³ Discussion of the jurisdiction of military commissions have seldom considered this question but one American member of the Commission of Responsibilities, 1919, wrote: "It seemed elementary to the American Representatives that a country could not take part in the trial and punishment of a violation of the laws and customs of war committed by Germany and her Allies before the particular country in question had become a party to the war against Germany and her Allies; that consequently the United States could not institute a military

Difficulties of this kind might be avoided if the United Nations established a combined Military Commission. Such a Commission might be given competence to try any offense against the law of war which could be tried by any of the participating states.⁹⁴

It has been suggested that such a United Nations Commission would present difficulties because Military Commissions do not apply the international law of war but the national rules of war which may differ among the participating states. This conclusion has been deduced from the general proposition that international law, including the law of war, binds states and not individuals. It has also been deduced from the Hague Convention of 1907 by which each contracting power obligates itself to "issue instructions" to its forces in conformity with the annexed regulations, agrees that the regulations and the conventions "do not apply except between contracting powers," and accepts "responsibility for all acts committed by persons forming part of its armed forces." ^{94a}

This opinion is believed to be erroneous. The provisions of the Hague Convention indicate that states are responsible under international law for the behavior of their armed forces, and are obliged to use due diligence to see that their forces observe the rules of war. They also suggest that states may require their courts martial and Military Commissions to apply national regulations in proceedings against members of their own forces. They do not, however, deny that in exercising jurisdiction over enemy forces they act, not by authority of their own regulations, but by authority of the international law of war. In fact the preamble of the Hague Convention suggests

tribunal within its own jurisdiction to pass upon violations of the laws and customs of war, unless such violations were committed upon American persons or American property, and that the United States could not properly take part in the trial and punishment of persons accused of violations of the laws and customs of war committed by the military or civil authorities of Bulgaria or Turkey" (with whom the U.S. was not at war) (pp. 75-6). Cowles writes: "Military tribunals have jurisdiction so long as a technical state of war continues. This includes the period of an armistice, or military occupation, up to the effective date of a treaty of peace, and may extend beyond by treaty agreement." Military commissions are normally agencies of military government in enemy territory. (U.S. Rules, Secs. 6, 7; U.S. Manual of Military Government and Civil Affairs, Dec. 22, 1943, Secs. 39, 42.) See also Elbridge Colby, "Courts Martial and the Law of War," this JOURNAL, Vol. 17, 1923, p. 109; Q. Wright, Control of American Foreign Relations, New York, 1922, p. 168. The international law basis of the jurisdiction of military commissions seems to be territorial, national, and protective jurisdiction rather than "universal jurisdiction" (Harvard Research, Jurisdiction over Crime) but in applying protective jurisdiction they are, like prize courts, bound to apply international law (see below, notes 96, 97).

Art. 229 of the Treaty of Versailles provided: "Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned." Such mixed military commissions were approved by the American members of the Commission of Responsibilities (Report, p. 71).

⁹⁵ Though in fact the international law of war is drawn on to supplement national regulations even in such cases. Colby, as cited.

a direct relationship between the individuals and the law of war by stating the object of the parties to "secure the general law and custom of war" and to establish provisions "to serve as a general rule of conduct for all belligerents." Furthermore, in cases not included in the regulations, "the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience."

Thus an enemy defendent could properly object if he were tried in such a commission on the basis of a national regulation contrary to the international law of war. While the authority of Military Commissions comes from the national sovereignty, their law in dealing with enemy persons comes from international law.⁹⁶ In this respect they resemble prize courts.⁹⁷

While the law of war applies to persons of all belligerent nations, practice has limited the competence of Military Commissions to persons acting in behalf of the enemy. Courts martial, applying national military law, have dealt with most offenses by the state's own soldiers. There would therefore be no departure from practice if particular United Nations or the United Nations as a group established Military Commissions with competence limited to enemy persons accused of violating the law of war. Members of United Nations forces if guilty of such offenses should be proceeded against, but such proceedings could be left to the tribunals and law of each nation. In case the tribunal found that an enemy person had already been tried and adequately punished by a tribunal of his own state, the principle non bis in idem might be applied. The function of a United Nations Commission, would be to deal with those cases not adequately dealt with by a national military commission.

"Act of state" cannot function as a defense in trials of individuals for breaches of the law of war even though the act is committed in the state's own territory. The fact that the state may be diplomatically responsible for such acts and bound to make reparations has not been held to eliminate the individual's liability before a Military Commission. It has been recognized that in cases of war or insurrection the individual can defend himself on the ground of act of state only if the act is one of "legitimate war." ⁹⁹ A state lacks power to authorize breaches of the law of war.

[∞] Ex parte Quirin, 317 U. S. 1, 1942; Cowles, as cited; E. D. Dickinson, in *Proc. Am. Soc. Int. Law*, 1943, p. 47.

⁹⁷ The Maria, 1 C. Rob. 340, 1799; The Zamora, 2 A. C. 77, 1916; The Paquete Habana, 175 U. S. 677, 1900.

⁹⁸ By Art. 228 of the Treaty of Versailles Germany recognized "the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war . . . notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies."

⁹⁹ Underhill vs. Hernandez, 168 U. S. 250, 1897, Moore's *Digest*, Vol. 2, p. 31; Ex parte Quirin, 317 U. S. 1, 1942; above, note 76.

There has, however, been question whether such acts subject the perpetrator to punishment if committed in pursuance of superior orders. In principle it would appear that superior orders cannot be a defense for an act which the state itself could not authorize. In practice the answer seems to have depended on the gravity of the offense and the definiteness of the order. An act of an obviously atrocious character has not been excused even by an explicit order. Acts the illegality of which would be less clear to the perpetrating soldier have been excused by the explicit order of the superior but not by a more vague tolerance by the superior.¹⁰⁰ There can be no doubt of the liability of the superior who orders or tolerates offenses of this kind.¹⁰¹

Apparently an enemy sovereign or chief of state cannot claim immunity from prosecution for breaches of the law of war. If he could and the doctrine respondeat superior were applied, all individual liabilities for breaches of the law of war might be avoided. Enemy chiefs of state have been made prisoners of war and have been punished for breaches of the law of war. 102 The principle of the independence and equality of states, while it applies in the relations of belligerents to neutrals in accord with the traditional concept of war, is suspended in relations of opposing belligerents to each other by the very nature of war. Each is seeking to impose his will on the other and is free to use measures of coercion permitted by the law of war in order to bring about a complete submission of the enemy to his will. Thus the reasons which accord immunity to chiefs of state in the courts of another state in times of peace do not apply to actions against an enemy ruler for breaches of the law of war while the war is in progress nor would they apply to acts against an ex-ruler after the war is over. A ruler recognized as such in the beace would doubtless from that fact acquire immunity from subsequent prosecution.103

While many enemy war criminals could properly be dealt with by military tribunals of particular Allied states or by combined United Nations Military tribunals enforcing the law of war, all could not. The law of war applies only in the relations between belligerents, consequently it would be difficult to apply that law to offenses committed by Germans against other Germans in Germany prior to Allied military occupation. Furthermore, it is contro-

¹⁰⁰ Oppenheim, Vol. 2, Sec. 253; The Llandovery Castle, German Court at Leipsic, Annual Digest, 1922-24, p. 235; Glueck, p. 140; Schwarzenberger, p. 72; Lawyers Guild, Report, p. 21; George Finch, "Superior Orders and War Crimes," this Journal, Vol. 15, 1921, p. 440 quotes on the point, Chief Justice Marshall in The Flying Fish, 2 Cranch 170, J. F. Stephens, History of Criminal Law of England, pp. 205-206, and the case of Henry Wirz, executed after the U. S. Civil War for brutal treatment of Union prisoners at Andersonville in spite of a pleas of superior orders. See also Little vs. Barreme, 2 Cranch 170, 1804. American and British rules of land warfare give greater weight to superior orders (U. S. Rules, Sec. 347).

¹⁰¹ U. S. Rules, Sec. 347.

¹⁰⁷ Swarzenberger, p. 74-75; Q. Wright, Legal Liability of the Kaiser, as cited.

¹⁰³ See Sec. 4, above.

versial whether some of the acts most condemned by opinion are forbidden by the law of war. Collective punishment of civilians offering resistance in occupied areas and execution of hostages as a measure of reprisal have been considered permissible by the national regulations of some of the United Nations if committed during a state of lawful war.¹⁰⁴

Breaches of the law of war if in fact committed in pursuance of a political movement would come under the usual conception of political offenses not subject to extradition. 105 Furthermore, the offenses listed in extradition treaties are usually confined to offenses against the criminal law and do not include breaches of the law of war. 108 If a tribunal were established in the name of the entire community of nations to try offenses against the law of war it might be assumed that neutral states, who perhaps in such a situation would provide some of the judges, would be ready to place such persons who had sought an asylum in their territory before the tribunal without the normal procedure of extradition.107 Such a tribunal, however, should in principle be open for the trial of anyone accused of violating the law of war whether on behalf of the Axis Powers or the United Nations provided he had not already been adequately punished. If the tribunal derives its authority from the community of nations and is charged with proceeding against violations of the traditional law of war, there should be no discrimination between the two sides. 108

This consideration raises the question whether present hostilities constitute a state of war in the traditional sense in which international law applies equally to both belligerents.¹⁰⁹

7. Offenses against the law of peace

The United States Constitution gives Congress power "to define and punish piracies, and offenses against the law of nations." 110 As applied in United States law this provision embraces two types of offenses; the first is a permissive extension of jurisdiction, the second an obligatory exercise of jurisdiction. In the first category are acts committed outside the normal territorial or personal jurisdiction of the United States which the United States is free to punish by virtue of a rule of customary international law as in the case of piracy or by a conventional rule as in the case of slave trading,

¹⁰⁴ The execution of hostages seems to be prohibited by Hague Regulations Art. 50 and Geneva Convention on Prisoners of War, 1930, Art. 2; U. S. Rules, Secs. 73, 343, 358 (d), final sentence, and 359, though it is permitted as a measure of reprisal by U. S. Rules, Sec. 358 (d), first two sentences.

¹⁰⁵ Re Ezeta, 62 Fed. Rep. 972, 1894, Harvard Research, Draft Convention on Extradition, Arts. 5, 6, in this JOURNAL, Vol. 29 (1935), Supplement, p. 117.

 $^{^{108}}$ "Military offenses" are not usually included in treaties either as extraditable or as non-extraditable; same, p. 119.

note 83. 108 See Hyde, Wright, Proc. Am. Soc. Int. Law, 1943, pp. 43–4, 55–6.

¹⁰⁹ Above, Sec. 3. 110 Above, note 19.

cable cutting, and pelagic scaling. Second are acts such as offenses against foreign diplomatic officers committed within the normal jurisdiction of the United States which the United States considers itself obliged to punish under penalty of international responsibility.¹¹¹

During the 19th century the theory came to be widely accepted that acts in both categories were crimes only against national law, and that the law of nations was involved only in permitting an extension of normal criminal jurisdiction or in requiring an exercise of normal criminal jurisdiction to avoid international responsibility. 112 The earlier theory, still held by many jurists, was different. It was considered that the law of nations itself established certain offenses of individuals and that national courts in dealing with such offenses acted as agents of the community of nations. 118 The law of nations, it was argued, established these offenses because, though they might threaten the peace and security of the state which exercised jurisdiction, they threatened primarily the peace and security of other states or of the international community as a whole. For convenience those threatening the peace of other states may be called "offenses against the law of peace," and those threatening the peace of the community of nations "offenses against universal law." While piracies, whose perpetrators were often referred to as hostes humanis generis, are the classic illustration of offenses against universal law, other offenses defined by general conventions or inherent in the conception of a world community might also be thus characterized.114

States early realized the importance of punishing acts, here described as offenses against the law of peace, such as injuries to foreign ambassadors, breaches of neutrality, setting on foot military expeditions against friendly governments, counterfeiting foreign currencies, or libelling or assassinating foreign sovereigns, because failure to do so might lead to war. These acts, therefore, in offending other nations, jeopardized the security of the state with jurisdiction over the culprits and it was not always clear which motive was most important in leading to their incorporation in national law. 115

¹¹¹ See Q. Wright, Control of American Foreign Relations, pp. 179-191.

¹¹² See Harvard Research, *Draft Convention on Piracy*, this Journal, Vol. 26 (1932), Supplement, pp. 754-60.

¹¹³ Same, pp. 751-54. This assumes that the exercise of national jurisdiction may be limited by international law, i.e. that a state may have jurisdiction, in certain circumstances, to apply and enforce the law but not to make it. It must apply and enforce international law (see above, notes 96, 97). The opposite opinion assumes that the jurisdiction of a sovereign state, if possessed at all, must be complete, i.e. it must include legislative, as well as judicial and executive power; there is no inherent necessity for such an assumption.

¹¹⁴ As, for example, slave-trading, illegal destruction of whales or other maritime resources, cable cutting, illegal trade in narcotic drugs or arms, and acts of international aggression.

¹¹⁸ ResPublica vs. DeLongchamps, 1 Dall. 111, 117, 1784, Moore's *Digest*, Vol. 4, p. 623; Q. Wright, *The Outlawry of War*, pp. 80–83. Laws penalizing propaganda hostile to foreign states have been based on both grounds: Vernon VanDyke, "The Responsibility of States for International Propaganda," this Journal, Vol. 34 (1940), p. 70.

It is clear that the acts of violence committed by the Axis Governments have been injurious both to the particular nations attacked and to the community of nations as a whole. It is also clear that many of these acts are of a character which if not committed under state authority or in a war would have the character of military expeditions, piracies, conspiracies to commit such acts, or other long established "offenses against the law of nations."

Leaving consideration of offenses against the community of nations as a whole for the next section, can persons committing acts injurious to other states in behalf of the Axis be punished for offenses against the law of peace?

International practice has refused to accord an individual immunity for an act injurious to another state on the ground that it was authorized by his government, if the act was in violation of the authorizing government's obligations under international law, at least if committed outside that government's territory. 116 Thus the old practice of private reprisals, whereby state authorization justified merchants in seizing property of foreign debtors on the high seas in time of peace fell into abevance.117 Such acts became piracy and the individuals were liable therefor. Reprisals henceforth could only be made by public vessels. By the Declaration of Paris of 1856 privateering was abolished and even in time of war a Letter of Marque no longer protected the privateer from treatment as a pirate. More recently submarine sinkings in breach of rules of international law have been formally declared to be piracy. 118 International practice has also withdrawn the protection of act of state from acts of soldiers and sailors invading foreign territory without justification of war, necessity, or consent, 119 or in violation of specific rules of war. 120 It would appear that if war is outlawed altogether, all acts which in time of peace are offenses against the law of nations — all sinkings at sea, invasions of foreign territories, bombings, in fact all military activities destructive of life or property - may no longer be covered by an act of state declaring war. Individuals committing such acts would, therefore, be criminally liable unless it could be demonstrated to the satisfaction of the tribunal exercising jurisdiction that the hostilities in which they participated were necessary for defense, were permitted for international sanctions or were generally recognized as a state of war, or that the acts were justified by the rules of war applicable during the de facto hostilities. 121

ue Above, notes 46, 47, 68, 75, 76.

¹¹⁷ Grover Clark, "The English Practice with regard to Reprisals by Private Persons," this JOURNAL, Vol. 27 (1933), p. 694.

¹¹⁸ See Unratified convention on Submarines, Washington Conference, 1922 (this JOURNAL, Vol. 16 (1922), Supplement, p. 57) and Nyon agreement during Spanish Civil War (same, Vol. 31 (1937), p. 179). Art. 22 of the London Naval Agreement (Trenwith, *Treaties of the U. S.*, Vol. 4, p. 5281) forbade submarine sinking of merchant vessels without putting passengers, crew, and papers in a place of safety but did not characterize violations as "piracy" as did the other two agreements referred to. See *Proc. Am. Soc. Int. Law*, 1938, p. 160. Raoul Genet ("The Charge of Piracy in the Spanish Civil War," this JOURNAL, Vol. 32 (1938), p. 253) and Manners (pp. 412–14) disapprove this use of the word "piracy."

¹¹⁹ Above, note 75. 120 Above, notes 76, 99. 121 Above, Sec. 3, and note 52a.

Since the conception of superior command functions only in respect to acts of state, once the shield of the latter doctrine is withdrawn the offender against the law of peace cannot defend himself by his orders or commissions unless under the circumstances they were permissible.¹²²

Prosecutions for offenses against the law of peace in national tribunals would be subject to the limitations discussed in connection with offenses against national law, including the claim of sovereign immunity. No such limitations would, however, apply to prosecution in an international tribunal. Such a tribunal would function in the interest of the community of nations as a whole. All states have an interest in the prevention of violations of the law of peace by individuals. States not participating in the present hostilities should, therefore, be willing to turn over such offenders for trial in the international tribunal without the formalities of extradition. 124

If it is assumed that the acts of the Axis governments constituted illegal aggression and did not institute a state of lawful war, many "war criminals" could be proceeded against as offenders against the law of peace. This conception, however, applies only to acts of individuals injurious to a state other than the one in whose territory the act was committed. Consequently the butchery of German Jews in Germany would not be an offense against the law of peace in the usual sense.

8. Offenses against universal law

If the community of nations is looked upon as a juristic community of which not only states but also individuals are members, 126 it should be entitled like all juristic communities to defend its own existence and it might be assumed that its law forbids acts by its members manifestly threatening that existence. Salus populi suprema lex. Piracies and offenses defined by general treaties have long been dealt with as offenses against universal law. 127 Treason and sedition are offenses inherent in the concept of a jural If the activity of the Axis Governments and their followers are not justified by the existence of a "state of war" but have the character of a conspiracy, rebellion, or aggression against the world community it may be held that all acts in pursuance of this conspiracy, having a character generally recognized as criminal in the law of civilized countries, 128 are crimes against universal law. 129 This appears to be the concept adopted by Acting Secretary of State Grew when he referred to the responsibility of the German

Above, note 77.
 Above, Sec. 4.
 Above, note 83.
 Above, notes 25 and 26.
 Above, notes 113 and 114.

¹²⁸ Acts of that character can be ascertained by reference to extradition treaties. A general definition is suggested in the Harvard Research, *Draft Convention on Extradition*, Art. 2, this JOURNAL, Vol. 29, 1935, Supplement, p. 72. See also list of extraditable offenses in U. S. and other treaties: same, pp. 244–74. A number of general conventions and proposals have included such lists: p. 279.

¹²⁰ Levy, p. 1069. This theory has been confused with the idea of holding individuals criminally liable for breach of the Pact of Paris. (Lawyers' guild, *Report*, p. 18; Glueck,

leaders "for the whole broad criminal enterprise devised and executed with ruthless disregard of the very foundation of law and morality." 130

The situation resembles piracy. That crime results from the violent or predatory character of the act, the illegitimate motives of the actor, and the absence of effective national jurisdiction.¹³¹ The offenses which have been characterized as war crimes combine violent and predatory action, the motive of promoting illegal aggression, and the absence of a national jurisdiction which can be relied upon to punish such offenses. The Axis Governments by their violation of the obligations of the state have forfeited the right to exercise jurisdiction, at home, in occupied territory, or on the high seas. Because of the magnitude of the hostilities, however, humanitarian and practical considerations would require that those governments be accorded a status like that which international law has accorded insurgents.^{131a}

This theory, like the older theory of piracy jure gentium, assumes that individuals, in addition to being subjects of their national communities, are to a limited extent subjects of the world community; that their acts manifestly directed toward the destruction of that community are criminal; and that the criterion for identifying such acts is to be found in the congruence of an illegal purpose of the movement to which they contribute and a criminal character of the act itself. States habitually apply such a theory to rebels and insurgents. These persons are in principle guilty of treason, but in practice they are usually accorded amnesty in so far as their acts conformed to the law of war and a military rather than a criminal intent.

The members of the community of nations have generally recognized the hostilities of the Axis powers as aggressions, contrary to the obligations of these states under treaties and general principles of international law. Aggression has been defined as "a resort to armed force by a state when such resort has been duly determined, by a means which that state is bound to accept, to constitute a violation of an obligation." The Axis powers as parties to the Pact of Paris were under obligation not to resort to armed

pp. 38, 190, note 4.) The Pact created obligations for states, not for individuals. Its significance for the war crimes problem is not that it created a crime of initiating hostilities, but that by "outlawing war" it made a "state of war" no longer a defense for acts which, apart from such a state have always been universal crimes. Just as a permitted killing in a duel became murder as soon as duelling was "outlawed" by legislation, so permitted killing and destruction of property in a war become piracy and murder as soon as war is outlawed. But the outlawry of war does not abolish the right of self defense, and thus, with war outlawed, killings and depredations by the forces of the aggressor become crimes and those of the defender acts of legitimate self defense. (John E. Stoner, S. O. Levinson and the Pact of Paris, Chicago, 1943, pp. 191, 196.) See, however, the exception referred to in note 52a.

¹³⁰ Dept. of State Bulletin, Vol. 12, No. 297 (Feb. 4, 1945), p. 155.

 ¹⁸¹ Harvard Research, Piracy, Art. 3, this Journal, Vol. 26 (1932), Supplement, p. 769.
 ¹⁸¹ The Three Friends, 166 U.S. 1, 1897; Q. Wright, Study of War, pp. 695-696; above,

¹²³ Harvard Research, Aggression, Art. 1 (c), this JOURNAL, Vol. 33 (1939), Supplement, pp. 847, 871.

force and their violation of this obligation has been determined by general recognition of the members of the community of nations. This is the universally accepted method for determining facts and establishing liabilities under general international law in the absence of an applicable convention providing a different procedure. ¹³³ If the Axis Governments are guilty of aggression, they cannot shelter individuals committing acts otherwise criminal in pursuance of that aggression by declaring them "acts of state," or acts during a "state of war." Furthermore, if this is so, such offenses must be regarded as acts of the individuals which commit them against the peace of the community of nations.

Offenses against universal law would be peculiarly adapted for trial in a tribunal acting under the authority of the international community. Such a tribunal would not be limited in competence by the place of the act or the nationality of the accused, nor would the defenses of act of state, superior orders, or sovereign's immunity be available to the accused.

9. Conclusion

Four systems of law—national law, the law of war, the law of peace, and world law—may be utilized to punish "war criminals." Each basis of prosecution has some advantages and some disadvantages.

Trials under national criminal law would have the advantage of precise rules and procedures and established tribunals, but the acts of many of the most serious offenders would not be subject to the jurisdiction of the criminal courts of any of the United Nations and there might be difficulty in securing the culprits if they have sought asylum in neutral states. Such trials would make no contribution to the evolution of international criminal law and, as the chief Nazi and Fascist officials might escape any national jurisdiction, such trials might not have important preventive effect. They would not vindicate international law nor would they have an important influence indeterring future "war criminals." Their main value would probably be in satisfying national demands for retribution, and even this satisfaction might prove incomplete.

Prosecutions under the law of war whether in national military commissions or în a United Nations military commission would also have the advantage of established rules and procedures. A larger proportion of the war criminals could be subjected to such commissions than to national criminal courts but offenses by Germans against Germans in Germany could not be easily dealt with, and difficulties in obtaining the culprits from neutral asylums might be encountered. Such trials would proceed on the assumption that the hostilities constitute "war" in the traditional sense and would make no contribution to the development of the international law of aggression. They would vindicate the law of war but not the developing law of

¹³³ Above, note 51. See also Q. Wright and others, Legal Problems in the Far Eastern Conflict, New York, 1941, pp. 117, 129, 145, 182.

peace. They might deter future soldiers from violating the law of war but they would not discourage future aggressors from initiating war. Their main value would also be to satisfy demands for retribution.

Prosecutions under the international law of peace would vindicate that law and would discourage future breakers of that law. Like prosecutions under the law of war they might not reach offenses committed within the Axis nations. They would also suffer the disadvantage of having a more controversial legal foundation than procedures under national law or the law of war. They might avoid some of the difficulties in getting custody of the culprits especially if a genuinely international tribunal were established with nationals of some neutral states on the bench.

Prosecutions under universal law would have the disadvantage from the juridical point of view of resting upon a controversial legal foundation. Such trials would look towards the future rather than to the immediate past but it is believed that sufficient legal materials exist to nullify the suggestion that they would rest upon ex post facto law. Such trials would be the most satisfactory in reaching all the war criminals, in vindicating the rule of law, in deterring future war crimes, in satisfying demands for retribution, and in preventing further danger from the war criminals. Such trials would assert that the community of nations, which the Dumbarton Oaks Proposals seek to organize, already exists, and would demonstrate by acts louder than words that human rights can be vindicated and inhuman offenses can be punished. Without widespread convictions on these matters, sustained by firmer evidence than the contracts of governments, the general organization for peace and security is not likely to flourish.

There is, of course, no reason for confining prosecutions to any one of these systems of law. Apparently the London declaration of 1942, the Moscow declaration of 1943, and the Yalta declaration of 1945 all contemplate the parallel use of several.

EDITORIAL COMMENT

ARMISTICES-1944 STYLE

The armistice agreements 1 concluded between the Governments and high commands of Rumania, Finland, Bulgaria, and Hungary and their opposing belligerents on September 12, September 19, and October 28, 1944, and January 20, 1945, respectively, have furnished the first clear-cut indications of the general type of political and military treatment to be meted out to the remaining Axis partners at the conclusion of hostilities. While a number of capitulations were signed in the earlier stages of the war,2 and two armistices, eo nomine, were concluded by the French Government and High Command with Germany and Italy respectively, no armistice agreements imposed by the United Nations have hitherto appeared in integral form, it being generally understood that published versions of the armistice concluded between the United Nations and Italy on September 3, 1943 were incomplete.3 The four armistice agreements and their annexes thus form the most interesting nexus of legal stipulations, military procedures, and politico-economic settlements which have appeared since the close of World War I. they are likely, under the prevailing climate of opinion which calls for a "long armistice," to serve for some time as yardsticks for the measurement of the political and social behavior of the defeated countries, they merit special attention and analysis. Finally, because what is sauce for the goslings may reasonably be assumed to savor of what is in store for the gander, they may have a certain value in forecasting the provisions of other armistices to come.

While Anglo-American practice in the past has been extremely flexible in referring to capitulations, truces, suspensions of arms, and other such acts, as armistices, and the reverse, *Continental practice, particularly since the

¹ For the texts of the four armistices see below, supplement, pp. 85–103.

² Reference is made to the capitulation of the residual Polish forces in Warsaw late in September, 1939; that of the Netherlands High Command on May '16, 1940; that of the Belgian High Command and the King on May 27, 1940; to the surrender of representatives of the Yugoslav High Command at the end of April, 1941, and of the Greek High Command in mid-May, 1941, as examples. The terms of surrender of Axis forces in Syria in June, 1941 antedate the formation of the United Nations and therefore do not possess a character comparable to the agreements here discussed.

For the proclamation of the Italian armistice by General Eisenhower on September 8, 1943, see *The New York Times*, September 9, 1943. For an alleged statement of the terms see *Revue de Droit International* (Sottile), XXII• Année, No. 2 (April–June, 1944), p. 170.

See Percy Bordwell, The Law of War between Belligerents: A History and Commentary, Chicago, 1908, pp. 294-295, and W. E. Hall, International Law, Oxford, 1895 (4th ed.), pp. 564-565.

First and Second Hague Conferences, has steadily crystallized its conceptions. It tends to consider an armistice as an agreement for the general termination of hostilities, concluded by both military and civilian representatives of a defeated Power on wider than strictly military bases, to provide not merely for the end of open warfare, but for a transitional regime of indeterminate duration. The experience of the United States as a negotiator of the armistices with Austria, Hungary, and Germany in 1918 committed it almost irretrievably to following Continental practice. It is not surprising, therefore, that the conception of a general armistice as largely equivalent to the "preliminary peace" of older usage, underlies the juridical thinking embodied, with its consent, in three of the four armistices under The non-participation of the Soviet Government in the practices of 1918 has not, however, operated to create any visible disharmony between the practice of the Allied and Associated Powers a quarter of a century ago and that of the Soviet Government and High Command now. If anything, the fact of Soviet participation in, and paramount influence on, the negotiations preceding the conclusion of these armistices tends to develop, in the present setting, precedents laid down by the Soviet Republic twenty-five years ago when it concluded armistice conventions with its limitrophe The armistices of 1944 are thus, both ideologically and textually, new syntheses of hitherto unjuxtaposed practices.

GENERAL PROVISIONS

All four armistices were concluded at Moscow between mixed military and civilian delegations of the defeated ⁷ and representatives of the Allied (Soviet) High Command, a British general participating in the negotiations with Bulgaria, because of the overlapping theaters involved, as "the representative of the Supreme Allied Commander in the Mediterranean." In keeping with the long established Continental practice of waiving ratification of armistice conventions if the negotiators possess special full powers, none of the armistices required further confirmation on either side, and thus expressly entered into effect immediately upon their signature. ⁸ However, on the Allied side a new factor entered into consideration: in addition to the

^{&#}x27;s See Paul Fauchille, Traité de Droit international public, Tome II, pp. 326-334 and 536-540 for an excellent statement of Continental practice.

See United States, Department of State, Foreign Relations of the United States, 1918, Supplement 1, Vol. I, pp. 1-498.

Thus the Rumanian Delegation consisted of a Minister of State, a General, a Prince and a civilian; the Finnish Delegation of the Minister of Foreign Affairs, the Minister of Defense (a General), the Chief of Staff and a general officer; the Bulgarian delegation of the Minister of Foreign Affairs, the Minister of Finance and two Ministers without portfolio—a wholly civilian delegation, which is an exception to the general rule. The Hungarian Delegation consisted of the Minister for Foreign Affairs, a General and the State Secretary of the Cabinet of Ministers.

Rumania, Art. 20; Finland, Art. 23; Bulgaria, Art. 19; Hungary, Art. XX.

explicit authorizations by specified national governments, the delegates acted not only for themselves but "in the interests of all the United Nations" in the Rumanian instrument and "on behalf of all the United Nations at war" with Finland, Bulgaria or Hungary respectively in the three other agreements. This stipulation thus laid claim for the United Nations to a new corporate and representative capacity ¹⁰ which is reflected, from time to time, in other articles.

All the armistices were drafted in English and Russian as the official languages, with a vernacular version, which is expressly denied any claim to authenticity, for each of the defeated powers. This marks a new advance for both Russian and English as diplomatic languages to the exclusion of French, and places English and Russian on a juridical parity. In the case of Finland a special interest attaches to the abandonment by Finland of any effort to negotiate in both Finnish and Swedish, this marking a new low

According to the Department of State Bulletin, Vol. X, No. 252 (April 22, 1944), pp. 374-376, Rumania was at war with the United States of America, Australia, Bolivia, Canada, Czechoslovakia, Haiti, Luxembourg, New Zealand, Nicaragua, the Union of South Africa, the Union of Soviet Socialist Republics and the United Kingdom, while relations with her had been severed by Argentina, Belgium, Brazil, Chile, Costa Rica, Egypt, Greece, Iran, Mexico, the Netherlands, Norway, Poland and Yugoslavia; Finland was at war with Australia, Canada, Czechoslovakia, New Zealand, the Union of South Africa, the Union of Soviet Socialist Republics and the United Kingdom, while relations had been severed by Belgium, Egypt, the Netherlands, Norway, Poland and Yugoslavia, and—a few months later, the United States of America; Bulgaria was at war with the United States of America, Australia, Bolivia, Czechoslovakia, Greece, Haiti, Luxembourg, New Zealand, Nicaragua, the Union of South Africa, the United Kingdom and Yugoslavia, joined at the last minute by the Union of Soviet Socialist Republics, while relations had been severed by Argentina, Belgium, Chile, Egypt, Iran, Mexico, the Netherlands and Poland. Hungary was at war with the United States of America, Australia, Bolivia, Canada, Czechoslovakia, Haiti, Luxembourg, New Zealand, Nicaragua, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom and Yugoslavia, while relations were severed by Argentina, Belgium, Brazil, Chile, Costa Rica, Egypt, Greece, Iran, Mexico, Netherlands, Poland and Uruguay.

It is apparent from the foregoing that Rumania was, with three relatively unimportant exceptions, chiefly involved in war with the United States, the British Commonwealth and Russia; Bulgaria with the United States, the British Commonwealth but not Russia—up to the last minute; Finland with Russia, the British Commonwealth, but not the United States, and with no severance of ties by any of the American Republics. Hungary was, accordingly, at war with Yugoslavia and all the states at war with Rumania, and so fell almost exactly into the pattern set by her European neighbor while additionally drawing the wrath—to the degree of severance of relations—of Uruguay. The status of Polish-Hungarian relations has never been satisfactorily cleared up, although the Polish Legation in Budapest ceased to function in January of 1941.

¹⁰ It will be recalled that in the peace settlement following World War I the preambles to the treaties of Versailles, Saint-Germain, Neuilly, Trianon, and Sevres indicated in each instance by name the "Principal Allied and Associated Powers" and also separately enumerated the states classified merely as "Allied and Associated Powers"; nowhere was there a corporate capacity or designation.

¹¹ This is stated in the conclusion of each agreement.

point in the history of the status of Swedish as an official language.¹² The Finnish and Hungarian armistices also entrusted to the Soviet Government the duty of transmitting official copies of the maps to each of the other governments on whose behalf the armistice was concluded.

MILITARY PROVISIONS

The principal military objective of the armistices being to terminate hostilities, the initial article in each instance provides for this, the Rumanian armistice having the widest scope and forcing a complete military volte-Thus Rumania was compelled to discontinue military operations against the U.S.S.R., withdraw from the war against the United Nations, break off relations with Germany and her satellites,18 and enter into the war and promise to wage war on the United Nations side, placing her armies under the Allied (Soviet) High Command, with a view to recovering her independence and sovereignty. Finland, having given her pledge to break with Germany and evict German troops before the armistice was signed, merely pledged mutual cessation of hostilities and a break with Germany's satellite states, such rupture being defined as including all diplomatic and consular relations, and use of communications media with Germany and Hungary,14 and—what is decidedly new and important—the discontinuance of pouch and cypher and telephone communications with foreign countries by diplomatic missions and consulates located in Finland. This proviso, which is clearly intended to circumvent new forms of "unneutral service" by neutral diplomatic missions, will no doubt have its own precedent value, as hitting at neutrals through the vanquished. Certainly it marks an appreciable recession of neutral diplomatic rights. For Bulgaria, after her fleeting war with the U.S.S.R., there was only the obligation to cease war with all the other United Nations, break with Germany and Hungary, and pledge to make available such forces as might be required for service under Allied command—a stipulation possibly intended to impress Turkey, but hardly likely to be fully enforced.

Further to disable the enemy, the armed forces of Germany in Rumania, Finland, Bulgaria and Hungary were ordered disarmed, the Rumanian armistice providing for their internment, the other three for the surrender of

¹⁹ In keeping with previous domestic practice, it is to be expected that Finland will publish an official version of the armistice in Swedish, but it will possess an "official" value only within the country and not internationally.

¹² The phrase, as a legal description for the anti-Soviet coalition built up by Hitler, is new but occurs frequently in the three armistices. It appears not only as a convenient label for the classification of puppet régimes, but is apparently also intended to put in question—in terms of Rumania's own experience—the "sovereignty" and "independence of such areas in view of their previous manifest subordination to the Third Reich. No such designation is found in the Hungarian armistice, Hungary itself being obviously the last important satellite.

¹⁴ Article 5 and Annex; Hungary, Art. XVI and Annex.

¹⁶ Rumania, Art. 2; Finland, Art. 2; Bulgaria, Art. 1 (B); Hungary, Art. I (B).

all military, naval, and air personnel as prisoners of war; in any event, all nationals of Germany and Hungary in Rumania, Finland, and Bulgaria and of Germany in Hungary, were ordered interned. This procedure marks a rather high degree of severity toward the civilian population involved but appears to have been imposed by the circumstances of the war and the possibility of large scale subterfuge to permit military personnel to escape. It is a procedure more severe than was exacted by Russia of either Finland, Poland, or the Baltic States at the conclusion of World War I. A noteworthy feature is the exemption from internment under the Rumanian armistice of German and Hungarian citizens of Jewish origin. This is integrally connected with other measures of a politically remedial character discussed below, which endeavor to erect the framework of a new and humane legality following the collapse of the repressive Nazi-authoritarian régimes.

The common pattern of the armistices, which becomes continually clearer. as their provisions are compared, is evidenced in the stipulations ensuring the Soviet and other Allied forces facilities for free movement in any direction, and access without cost to all installations, transport systems, airfields, etc., of the respective countries.16 The surrender of all Allied personnel in enemy hands is next demanded, entailing the repatriation of Allied prisoners of war as well as of interned Allied citizens on the territory of the defeated countries and Allied nationals transported to either Finland, Rumania, or Bulgaria. This is exacted of Rumania, Bulgaria and Hungary on a unilateral basis, whereas Finland receives an explicit pledge that Finnish prisoners of war and interned persons now located on the territory of Allied States will be transferred to Finland. This posits an equality and reciprocity of treatment for Finland which reveals itself elsewhere, chiefly through skilful drafting, in appreciably milder terms or more restricted demands than those imposed upon the former Balkan satellites. Special attention is given the needs of prisoners, internees and displaced persons, the agreements setting a formal standard of "adequate food, clothing, and medical services in accordance with hygienic requirements"—apparently an appeal to scientific standards of public health rather than to the provisions of international sanitary conventions.

MINORITY GUARANTEES

Correlative to the stipulations liberating Allied nationals are those releasing, irrespective of citizenship or nationality, all persons held in con-

^{15a} German nationals of Jewish origin, temporarily domiciled in Hungary, were exempted from internment. Rumania, Art. 2, Annex; Hungary, Art. I, Annex.

¹⁶ Rumania, Art. 3 and Annex; Finland, Art. 3 and Annex; Bulgaria, Art. 3; Hungary, Art. III and Annex.

¹⁷ Rumania, Art. 5; Finland, Art. 10; Bulgaria, Art. 4 and Protocol. The Hungarian armistice speaks of providing "adequate food, clothing, medical services and sanitary and hygienic requirements"—another evidence of reference to objective rather than juridical, i.e., conventional, standards.

finement in the territory of the defeated nations on any one of three grounds. 18. The first category embraces activities in favor of the United Nations presumably applying to overt acts; the second covers persons incarcerated because of their sympathies with the cause of the United Nations—attitudes doubtless characterized by the enemy as subversive; the third category comprises offenses arising from status, covering persons condemned simply because of their racial origin—a term broadened in the Bulgarian armistice to cover "racial or religious reasons," quite understandable in areas where an odium theologicum has long prevailed. Taken together with the pledge to repeal or remove all discriminatory legislation and restrictions or disabilities of this character, these clauses enter a new field quite unconnected with military operations. They amount to an internationally imposed amnesty for offenses against an overthrown political régime. the same time they set up a new form of minority guarantees for political, racial or religious groups bereft of any toleration under outgoing totalitarian A further promise of remedial action is given in the pledge exacted of each of the defeated to collaborate with the Allied Powers in the apprehension and trial of persons accused of war crimes. 19

ECONOMIC CLAUSES

With persons in these various categories disposed of, the armistices turn to the material side, requiring first the restoration of previously existing state frontiers ²⁰ between Rumania and Russia, Rumania and Hungary, Finland and Russia, Bulgaria and Greece and Yugoslavia, and between Hungary and Czechoslovakia, Rumania, and Yugoslavia. This is not merely a return to the status quo ante, but a basic decision regarding frontiers for the future. In that respect at least, the clauses are those of a preliminary peace.

In the wake of surrender of territory comes the surrender as "trophies" or "booty" of all German and Hungarian war matériel, including both war and merchant vessels of both countries found within Rumanian, Finnish or Bul-

- 18 Rumania, Art. 6; Finland, Art. 20; Bulgaria, Art. 5; Hungary, Art. V.
- ^{18a} Because of the complicated and ill-defined position of a number of categories of persons found in Hungarian territory, the Hungarian armistice added to Article V a special paragraph obligating the Hungarian Government to take "all necessary measures to ensure that all displaced persons and refugees within the limits of Hungarian territory, including Jews and stateless persons, are accorded at least the same measure of protection and security as its own nationals."
- ¹⁹ Rumania, Art. 14; Finland, Art. 13; Bulgaria, Art. 6; Hungary, Art. XIV. The Hungarian armistice additionally provides for "the surrender to the governments concerned of persons accused of war crimes". This is a stipulation obviously intended to forestall and override objections of a statutory or constitutional character, such as that laid down in Art. 112 of the Weimar Constitution of the German Reich against a nation's surrender of its own nationals. This may well forecast an analogous provision in the armistice terms for a defeated Germany.
- ²⁰ Rumania, Arts. 4 and 19; Finland, Arts. 6, 7, 8, and Annex 9; Bulgaria, Art. 4 and Protocol; Hungary, Art. II.

garian jurisdiction.²¹ Other stipulations lay down guarantees against the removal or destruction or sabotage of enemy-owned or enemy-controlled property, movable or immovable, ²² whether owned by the enemy state or by enemy nationals or by non-nationals domiciled in enemy or enemy-occupied territory. While comprehensive in its scope and phrased so as to apply to widely ramified conditions, this proviso is apparently directed primarily against the flight of privately owned capital from regions to be placed under occupation by the Red Army. All such property in Rumania and Finland is to be subject to the Allied (Soviet) High Command; in Bulgaria and Hungary to the dictates of the Allied Control Commission.

The treatment of merchant shipping under the armistice conditions is rather complex, and some of the thorniest questions as to title and possession are deliberately postponed, it being obviously impossible for the United Nations to reach agreement on all the points of law, including prize law, before the armistices were concluded. In the main, merchant shipping of the United Nations found in the ports of the defeated countries is, without exception, to be turned over to the Allied (Soviet) High Command "in the interest of the Allies" and placed under its operational control "for the duration of the war against Germany and Hungary." Subsequently such ships are to be returned to their owners. That this opens up a number of interesting legal problems is obvious in the light of recent litigation over the ships of Estonia, Latvia, and Lithuania in foreign courts.²²

The fiscal and economic controls to be exercised by the Allied (Soviet) High Command in the territory of the defeated states are extensive, involving power to demand or requisition goods and currency to cover the needs of the control agencies, and a blanket right to utilize all the major forms of economic installations and enterprises, if necessary.²⁴

The problem of reparations ²⁵ is differently faced in each armistice. Rumania's load is appreciably lightened by her participation in the war on the Állied side, yet a total of \$300,000,000 payable over a six year period, chiefly in commodities such as grain and oil, is required of her. Finland is held to a similar amount, to be paid for in timber, paper, cellulose, seagoing craft, etc. Bulgaria is merely required to "make such reparation for loss and

- ²¹ Rumania, Art. 7; Finland, Art. 15; Bulgaria, Art. 12; Hungary, Art. VII, and Protocol, Art. 2. Only *German* material and shipping are to be surrendered by Hungary.
- ²² Rumania, Arts. 8-9; Finland, Arts. 16-17; Bulgaria, Arts. 13-14; Hungary, Arts. VIII-X.
- ²² Cf. Briggs, Herbert W., "Non-Recognition in the Courts: The Ships of the Baltic Republics," this JOURNAL, Vol. 37, No. 4 (October, 1943), pp. 585-596.
- Rumania, Art. 10; Bulgaria, Art. 15, and Protocol 4, Art. 17; Hungary, Art. XI and Annex. Oddly enough, only a general pledge to respond to requisitions was required of Finland in Art. 19.
- ²⁵ The phraseology involved is almost strained in its circumlocution (our italics): "Losses caused to the Soviet Union will be made good" by Rumania; "Losses caused by Finland . . . will be indemnified," but Bulgaria will make such reparation . . . as may be determined." Rumania, Art. 11; Finland, Art. 11; Bulgaria, Art. 9; Hungary, Art. XII.

damage caused by the war to the United Nations, including Greece and Yugoslavia, as may be determined later." Since there was only a paper war between Bulgaria and the Soviet Union, no real reparation claims arise from that quarter; only the United Nations directly involved need expect reparations from Bulgaria. The Hungarian armistice explicitly sets aside \$100,000,000 of reparations payments on behalf of Czechoslovakia and Yugoslavia. Compensation (not reparations) will be paid for losses caused to the property of other Allied States and their nationals, the amount to be fixed at a later date. These stipulations on behalf of the other United Nations and their nationals constitute a promissory note destined to be rather illusory if only because reparations carry their own priority and are of a nature to exhaust the ability of the defeated to pay them before compensation claims get a hearing.

Restoration, chiefly to the Soviet Union, of evacuated movable property which is comprehensively enumerated, is pledged in almost identic language in each instrument.²⁷ This is another of the remedial acts of the armistices in effecting a large scale undoing and reversal of the spoliations, the "national grand larceny" to which the Soviet Union was subjected by the acts of the Axis coalition. The logical corollary to such acts of material restoration is the juridical one of the restoration of all legal rights and interests of the United Nations and their nationals as they existed before the war, and the exaction of a pledge from the defeated to return such property in good order.²⁸ The armistices thus recognize the existence of two régimes of property and give legal status and support to each.

POLITICAL CONTROLS

The final group of stipulations is intended to assure the victors unchallenged and unchallengeable political control. Each armistice expressly requires the dissolution of all pro-Hitler or other fascist political, military, paramilitary or other organizations conducting propaganda hostile to the United Nations (especially to the Soviet Union) and binds each of the defeated not to tolerate in future the existence of such organizations on its territory.²⁹ A further article ³⁰ in two instances places "the printing, im-

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Rumania, Art. 11; Hungary, Art. XII, Annex. Finland is held to similar "indemnification in the future, and the amount of the compensation is to be fixed separately."

²⁷ Rumania, Art. 12; Finland, Art. 14; Bulgaria, Art. 11. Greece and Yugoslavia are likewise to benefit by Bulgaria's acts of restoration; no analogous article is found in the Hungarian armistice.

²⁸ Rumania, Art. 13; Finland, Art. 12; Bulgaria, Art. 10; Hungary, Art. XIII.

²⁹ Rumania, Art. 15; Finland, Art. 21; Bulgaria, Art. 7; Hungary, Art. XV. This type of stipulation has been insisted upon by the Soviet Government as a part of nearly every basic settlement with foreign countries. Such anti-propaganda guarantees were inserted in the Baltic peace treaties of 1920, and in the various settlements with other countries such as China and Japan. They are found in the multiple exchange of notes constituting the settlement with the United States on November 17, 1933. The negotiation of the three armi-

portation and distribution of periodical and non-periodical literature, the presentation of theatrical performances and films, the work of wireless stations, post, telegraph and telephone services" under the control of the Allied (Soviet) High Command. While undoubtedly a paramount necessity in order to break Nazi domination of the public mind in Rumania and Bulgaria, this proviso goes appreciably beyond previous armistices and sets up a rigid and rigorous mechanism of opinion control which is, to say the least, capable of ancipitis usus. Only the existence of Allied Control Commissions, expressly provided for in each instrument, 31 stands in the way of possible political abuse of the sweeping powers of control enumerated above.

The Allied Control Commission in Rumania, whose powers are only sketchily outlined in an annex to the armistice agreement, is to serve chieffy as a means of liaison between the Allied (Soviet) High Command and the Rumanian government. It is presumed expressly to act "on behalf of the Allied Powers" and apparently not for the United Nations. The details as to its exact composition and powers and procedures are left for further elaboration. The Allied Control Commission in Finland, whose powers were worked out in considerable detail, is left in substantially the same situation. The Allied Control Commissions in Bulgaria and Hungary, which are to be headed by a Soviet representative, expressly envisage participation in their labors by representatives of the United States and the United Kingdom.

Viewed in retrospect, the four armistices reveal the need for, and recognize the necessity of action on behalf of, a United Nations structure which is not presently in being; they endeavor to act corporately for the United Nations and actually succeed in representing only the much smaller grouping of "Allied Powers." The control bodies they create are only imperfectly delineated and their actual role is fixed with anything but juridical precision. The armistice with Rumania bears numerous evidences of having been very hastily drawn up; that with Finland reveals highly precise, expert, smooth drafting, while the Bulgarian and Hungarian instruments are decidedly more general in character. They tend to cover with broad strokes new situations hitherto ungoverned or only imperfectly reached by the law of nations. But they do focus with unfaltering precision on the complete destruction of Germany's power, leaving to the future the more careful defining of the rules which will govern some personal and many property relations between régimes organized on different economic principles.

stices under review afforded the Soviet Government a special opportunity to extend the stipulations to cover the entire bloc of the United Nations, thus broadening and more nearly universalizing the anti-propaganda guarantees.

²⁰ Rumania, Art. 16; Bulgaria, Art. 8, Hungary, Art. XVI and Annex. The Finnish armistice contains no analogous provisions.

Elementary, Art. 18 and Annex; Finland, Art. 22 and Annex; Bulgaria, Art. 18; Hungary, Art. XVIII and Annex.

They also serve to indicate in considerable detail the juridical principles likely to be followed in dealing with Germany at the time of her ultimate capitulation.

MALBONE W. GRAHAM

POLAND AT YALTA AND DUMBARTON OAKS

The Atlantic Charter may no longer be regarded as a scrap of paper unsigned and uncertain in content and purpose, embodying merely the pious wishes of the heads of state. At the Crimea Conference the leaders of the three Great Powers again put their stamp of approval on and gave new life to the strained and faltering instrument. They declared in their announcement of February 11, 1945, under the heading "Declaration on Liberated Europe" that:

The establishment of order in Europe and the rebuilding of national economic life must be achieved by processes which will enable the liberated peoples to destroy the last vestiges of Nazism and Fascism and to create democratic institutions of their own choice. This is a principle of the Atlantic Charter—the right of all peoples to choose the form of government under which they will live—the restoration of sovereign rights and self-government to those peoples who have been forcibly deprived of them by the aggressor nations.

After stating that the three Governments will jointly assist the liberated states where necessary to establish internal peace, to carry out relief, to set up interim authorities representative of democratic elements and pledged to free elections, and to facilitate the holding of such elections, the Declaration continues:

By this declaration we reaffirm our faith in the principles of the Atlantic Charter, our pledge in the declaration by the United Nations, and our determination to build in cooperation with other peace-loving nations world order under law, dedicated to peace, security, freedom, and the general well being of all mankind.1

These fresh affirmations of the Atlantic Charter are merely reiterations of prior pronouncements of a similar kind on the part of the Big Three and other nations. The principles of the Charter were agreed to by Russia, Poland, and other countries at the Inter-Allied Meeting in London on September 24, 1941, in the Declaration of the United Nations of January 1, 1942, to which 45 nations have now adhered, and in the series of Mutual Aid Agreements of 1942 and later. The British-Russian Alliance Treaty of May 26,

¹ The Atlantic Charter as promulgated by President Roosevelt and Prime Minister Churchill on August 14, 1941, declared that:

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(1) Their countries seek no aggrandizement, territorial or other.
(2) They desire to see no territorial changes that do not accord with the freely expressed

wishes of the peoples concerned.

They respect the right of all people to choose the form of government under which they will live; and the wish to see sovereign rights and self government restored to those who have been forcibly deprived of them.

1942, provided for collaboration with other countries along the lines of the Atlantic Charter. In this Treaty they agreed not to seek "territorial aggrandizement for themselves" nor "interference in the internal affairs of other states." 2

Can it be said that Russia and the other powers are not solemnly bound to abide by the commitments of the Atlantic Charter and that Russia was not specifically obligated, as from September 24, 1941, to apply these principles in the solution of the Polish problem? The question answers itself, if there is any virtue at all in these international engagements.

It is true that the eastern boundary of Poland, as established by the Riga Treaty of March 18, 1921, was repudiated by Russia when Stalin and Hitler joined in their compact of non-aggression, on August 23, 1939, and in their partition of Poland five weeks later (September 28). But scarcely six weeks after Hitler's surprise attack on Russia in June, 1941, Russia repudiated this partition in an agreement of July 30, 1941, with Poland. At the same time Mr. Eden declared that the British Government "did not recognize any territorial changes which had been effected in Poland since August, 1939," and would not recognize such changes "unless they take place with the free consent and good will of the parties concerned." On May 26, 1942, Russia and Great Britain signed their treaty of alliance mentioned above.

Since these assurances and commitments were made by Russia she has definitely changed her attitude toward the Polish Government in London which she had repeatedly recognized and treated with as a friendly Government. Besides other unfriendly acts, she suspended diplomatic relations with that Government in April, 1943, because of its alleged attitude toward the murder of Polish war prisoners near Smolensk. She denounced the Polish Constitution and the refugee government as undemocratic (Ye shades of Lenin!). In January, 1944, she publicly demanded Polish territory up to the Curzon line as she had done secretly at Teheran. In the same month she rebuffed the proffered mediation of the United States and Britain in the rising estrangement with Poland. With methodical purpose she proceeded to support and deal with a puppet administrative authority in Poland called the "National Committee of Liberation," which is reputed to contain a number of Soviet and communist agents, and which appears to be spreading and carrying out communistic policies in Poland. This Committee she has recently recognized (January 5, 1945) as the Provisional Government of Poland.

^{*} For a review of these engagements, see the present writer's "A Pattern of World Order," this JOURNAL, Volume 36 (1942), p. 621, and "The Polish Boundary Question," Volume 38 (1944), p. 441.

³ On November 6, 1941, the 24th anniversary of the Socialist Revolution, Mr. Stalin in a speech at a meeting of the Moscow Soviet of Deputies of the working people said:

We have not and cannot have such war aims as the seizure of foreign territories and the subjugation of foreign peoples—whether it be peoples and territories of Europe or peoples and territories of Asia, including Iran. Our first aim is to liberate our territories and our people from the German-Fascist yoke.

In these matters Russia appears to have been acting unilaterally, although the Moscow Declaration of October 30, 1943, issued in her own capital, calls for the "closest cooperation between the three Governments in the examination of European questions arising as the war develops." On the other hand, it has been said and not denied in responsible quarters that Russia was given considerable latitude in dealing with Poland at the Teheran Conference in December, 1943. At any rate, Prime Minister Churchill thereafter vigorously supported the Curzon line in his speech to Parliament in the same month. And subsequently both he and President Roosevelt made light of the binding character of the Atlantic Charter and even of its existence as a formal document.

This in rough outline was the Polish situation before the Crimea Conference. Here the Powers apparently gave much consideration to the problem and then issued a decision in some respects exactly contrary to the principles of the Atlantic Charter which they had just reaffirmed. All that Mr. Churchill and Mr. Roosevelt seemed able to do was to try to give a democratic tinge to a Stalin dictate of possibly a year before. They propose among other things that "the present provisional Government" should be reorganized "on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad" and "pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot." The new Government will be called the "Polish Provisional Government of National Unity" and will be recognized by the exchange of ambassadors with Russia, Britain, and the United States.

Finally they declared:

The three heads of Government consider that the Eastern frontier of Poland should follow the Curzon line with digressions from it in some regions of five to eight kilometres in favour of Poland. They recognized that Poland must receive substantial accessions of territory in the North and West. They feel that the opinion of the new Polish Provisional Government of National Unity should be sought in due coure on the extent of these accessions and that the final delimitation of the western frontier of Poland should thereafter await the peace conference.

Can this fifth partition of Poland be said to conform to the first three principles of the Atlantic Charter quoted above? In my opinion it can not. Nor is it otherwise sound. If, as Russia claims, she is entitled to eastern Poland on ethnic grounds, by what principle is Poland allowed accessions of German territory? If on historic grounds, then why may she not claim the balance of her 1914 territory from which she has recently expelled the Germans? The partition strips away a third of Poland's territory without a voice and promises her alien lands in return. It is submitted that whatever may be the proper boundary of eastern Poland in view of ethnic, strategic and other factors, and whatever may be the makeup of the improvised Polish Government, these things are being imposed on the Polish nation without its consent

and under untoward circumstances (dating back to 1939) of military occupation, foreign administration, movement of populations, repression of sentiment, redistribution of lands and the like. It is but inflicting a festering sore of discontent and revolt on the body politic of a gallant and faithful ally. Can such a decision make for a stable new world? Is it not contrary to the ideals and aims of a just peace which is to be maintained by the new world organization?

It is realized of course that Russia is, with her new found power, in a dominating position all along her European border where she is busy establishing a sphere of influence the like of which she abjures to the western Allies, and which (together with alliances and balance of power) Secretary Hull pronounced as out-moded after the Moscow conference. The writing on the wall is that she intends to have governments on her border which are "friendly" to her regardless of her own policies. This, as a practical matter, can only mean that, although the democratic processes may be retained, care will be taken that the officials and candidates are of the "friendly" sort and that their policies integrate with those of Russia. Examples of the methods which may be employed to this end are apparent not only in recasting the Polish Government along Russian lines but also in other border countries. In this connection it may be pertinent to ask under whose control, military or otherwise, are the "free and unfettered elections" to be Are the political prisoners to be released and the deported Poles returned, and allowed to vote? Is there to be freedom of press and assembly for campaigning purposes?

It is natural to inquire whether the Polish problem would have fared any better if it had come up for consideration by the new world organization under the Dumbarton Oaks plan. The plan envisages that disputes shall be adjusted without resort to armed force; the Security Council is to see to that. Peaceful methods are to be used in the first instance. If these fail, the dispute may stand undisposed of, but the use of force by either party is to be prevented if possible. It seems that no settlement is to be imposed upon either party, except by virtue of the pressure of world opinion as represented in the Council and Assembly.

Before the Security Council Russia would appear in her present posture, that is, bent upon bringing about a friendly government in Poland and acquiring the territory of eastern Poland which she seized from Poland 150 years ago but which she has acknowledged for 25 years past as Polish territory. She would claim the Curzon line as the proper and lawful boundary and that the Polish Government is Fascist and hostile. A threat of war being imminent, the Security Council would take charge of the dispute. Probably its first efforts would be directed toward setting up a Polish Government after a fair election held under its supervision with safeguards to ensure that it expressed the will of the people. It would have to decide what territory the election should cover. Next the Council might try to

bring the two Governments together in an amicable settlement by negotiation, conciliation, arbitration or judicial process. If these efforts failed, the Council would have to consider the application of coercive measures, as Russia in possession of the disputed territory might be held to be an aggressor. At this point she could veto such action in Council, if the unanimity rule prevailed among the permanent members. If the rule did not apply to coercive measures short of force, the Council could proceed with measures of isolation—the rupture of diplomatic relations, communications, commerce and the like. Sanctions of this sort would undoubtedly result in hostilities with ill-boding consequences.

Should the parties remain obdurate (Russia maintaining her military occupation of eastern Poland), the Council would have to resort to the use of armed contingents by way of demonstration, blockade, or attack. But at this point, under the unanimity rule, Russia could block such hostile measures. Whereupon she would stand in possession of the territory, probably at war with Poland and defying the powers to dislodge her. If they attempted to do so no doubt a world war of the first magnitude would ensue.

After the Dumbarton Oaks plan comes into force, could the Polish settlement handed down at the Crimea be reconsidered and ameliorated by the Organization? Its policy will tend to keep the existing balance and to maintain the status quo, if, indeed, that is not to be the main aim and purpose of the new Organization as it was originally of the League of Nations.⁵ It is evident that any adjustment in favor of Poland must, under the Security procedure, come through a voluntary concession on the part of Russia, a possibility which would seem to be highly unlikely. Even if the majority rule of voting were adopted for the Security Council, what chance of success would a majority coalition have in attempting to apply corrective measures on the complaint of Poland or to apply coercive measures against Russia in order to induce a more tractable attitude? It would seem to be one of the realities of the world community, clearly envisaged by Russia, that this avenue to war, though it may be made difficult or be camouflaged by other processes, cannot be entirely closed so long as great powers exist capable of assuming the immense burdens of modern warfare. And, as a corollary, it would seem to follow that the Dumbarton Oaks proposals as at present fore-

⁴ In all such matters of peaceful settlement the Council would act by majority vote, excluding the disputants but including the permanent members not disputants: Department of State Press Release, March 24, 1945.

^{*} It may be recalled that the guaranty of the territorial integrity and political independence of all members of the League in Article X of the Covenant with the implication of maintaining the territorial and political stipulations of the Peace Treaties of 1919 and 1920 was the main cause of the failure of the Covenant in the United States Senate. Article X, however, later became a dead letter because of the failure of the powers to carry out their obligations, particularly in the cases of Manchuria, Ethiopia and Finland, although the United States initiated and maintained her doctrine of non-recognition in the first case, and gave assurances of coöperation in the second case.

cast, would leave the great powers vis-à-vis the small powers about where they have always been—the former in a dominating position to enforce their will to a large extent on the latter. This domination may not be carried out so arbitrarily and ruthlessly as heretofore, but it is there in the background just as certainly as ever, and may show in the ultimate outcome of major international disputes. It will be especially evident in curbing any aggressive tendencies of the small nations. In short, the Dumbarton Oaks security plan may become in the end only another plan for the security of the status quo of the nations. Mr. Churchill in his speech of February 27 indicated as much:

Finally under a world organization of nations great and small, victors or vanquished will be secure against aggression by indisputable law and overwhelming international force.

We may found a large world organization which, armed with ample power, will guard the rights of all states, great and small, from aggression or from the gathering of the means of aggression.

L. H. WOOLSEY

POLAND AND THE CRIMEA CONFERENCE

Probably no part of the statement issued by the participants in the Crimea Conference on February 11, 1945, has aroused more comment than that part which concerns the boundaries and government of Poland. To secure a proper perspective of this question it is necessary to go back to Point 13 of President Wilson's Fourteen Points of January 8, 1918, providing for "An independent Poland with access to the sea." ¹ This was fulfilled eventually by approving for Poland of an area of nearly 150,000 square miles, of which 67½ per cent came from Russia, 20½ per cent from Austria, nearly 12 per cent from Germany, and .1¼ per cent from Hungary. The western boundaries of Poland were practically determined by the Treaty of Versailles. Article 87 of the same Treaty provided that—

The boundaries of Poland not laid down in the present Treaty will be subsequently determined by the Principal Allied and Associated Powers.⁴

This article was repeated in the preamble to the Treaty of the Principal Allied Powers with Poland of June 28, 1919. The determination of the

- ¹ U. S. Foreign Relations, 1918, Supp., Vol. I, Washington, 1933, p. 16.
- ² Sophia Saucerman, International Transfers of Territory in Europe, U. S. Dept. of State Pub. No. 1003, Washington, 1937, p. 176.
- ³ Articles 27 (7), 28, 87, 88, 91–93 and 98. See Lawrence Martin's introduction to Carnegie Endowment for International Peace, *The Treaties of Paris*, 1919–1923, New York, 1924, Vol. I, pp. lii and xi, note 1.
- Carnegie Endowment for International Peace, work cited, p. 62; this JOURNAL, Supplement, Vol. 13 (1919), pp. 194-195.
- ⁶ C. F. Redmond (ed.), *Treatics*, etc., Vol. III, Washington, 1923, p. 3715; this JOURNAL, Supplement, Vol. 13 (1919), p. 423.

eastern boundaries under this provision was complicated by the military activities of Marshal Pilsudski and other Polish generals against the Bolsheviks.

Two main controversies were involved, one with Lithuania over Vilna and one with Russia chiefly over Eastern Galicia. The Poles had invaded Eastern Galicia and occupied Lemberg (Lwów) on November 5, 1918, less than a year from the time of the Bolshevik seizure of power, and during 1919 completed their conquest. At a meeting of the Council of Foreign Ministers at Paris, on April 26, 1919, Jules Cambon, President of the Commission on Polish Affairs, presented a Note from that Commission, which read in part as follows:

In regard to Galicia . . . , if primarily ethnographical considerations were followed it is certain that in spite of the large Polish minority in Eastern Galicia the frontier of Poland would run west of Lemberg, unless an area containing a Ruthenian majority were to be assigned to Poland.

This question thus introduces problems of general policy involving consequences of the utmost gravity. Several solutions may be considered, namely; the creation of an independent state, the establishment of an autonomous state under the control of the League of Nations, the partition of Eastern Galicia between Poland and the Ukraine.

At a meeting of the Council on June 18, 1919, A. J. Balfour discussed a Memorandum from him, which read in part as follows:

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. . . The Ruthenians must be told that, though the Poles are temporarily in occupation of their country, they are acting under the directions of the League of Nations, and that the Ruthenians will be given a full opportunity of determining by plebiscite, within limits to be fixed by the League of Nations, what their future status is to be.

Acting under the authority of Article 87 of the Treaty of Versailles, the Supreme Council, on December 8, 1919, issued a "Declaration relating to the Provisional Frontiers of Poland," in which the Principal Allied and Associated Powers—

without reference to stipulations concerning the final fixing of the eastern frontier of Poland, declare that from the present they recognize the right of the Polish government to proceed, under the terms already provided for by the Treaty of June 28, 1919 with Poland, with the organization of a regular administration of the territory of the former Russian Empire situated west of the line here defined.⁸

⁸ U. S. Foreign Relations, The Paris Peace Conference, 1919, Vol. IV, Washington, 1943, p. 625.

⁸ Work cited, p. 838.

⁸ French text in British and Foreign State Papers, Vol. 112, 1919, pp. 971-972; English translation in Ann Su Cardwell, Poland and Russia: The Last Quarter Century, New York, 1944, p. 10. See also Martin, work cited, p. lii. This answers Mr. Churchill's argument that the Curzon Line was the definitive boundary. Cong. Rec., 79th Cong., 1st Sess., Vol. 91, No. 39, March 1, 1945, p. A992, col. 3. It also answers Mr. Roosevelt's argument that it represents a "fair boundary." Cong. Rec., as cited, p. 1655, col. 3.

This line, the so-called "Curzon Line," which, be it noted, was not a definitive boundary, but a recognition of Polish claims at least that far east, ran roughly from the Lithuanian border near Grodno south and stopping "at the Bug River at a point where the old Austrian and Russian frontiers met" near Brest-Litovsk. "From there on it was to have been a line running between the Polish and the Bolshevik armies," which extended in a slightly southwesterly direction to the Carpathian Mountains at the Czechoslovak border. While it assured Poland most of the territory in which Poles predominated, it left Vilna to Lithuania. The Council also decided to grant Eastern Galicia autonomy for twenty-five years under a Polish protectorate, its subsequent status to be determined by the League. 10

Vilna, the capital of the medieval kingdom of Lithuania, passed under Polish influence when the two countries became united by the marriage of the Grand Duke Vladislav II Jagello of Lithuania with the young Queen Hedwig of Poland in 1386, a union which lasted until the partitions of Poland in the latter part of the eighteenth century, when Vilna passed under Russian control. In 1920 Vilna was occupied by Bolshevik forces and on July 12, 1920, the Treaty of Moscow was signed between Russia and Lithuania, by which Vilna and parts of Suwalki and Grodno were assigned to Lithuania." When the Russians were driven out Poland appealed to the League of Nations and the Council sent a military commission to the scene. On October 7, 1920, Poland and Lithuania signed an armistice at Suwalki accepting as a provisional boundary a revised "Curzon Line" which still left Vilna to Lithuania. The day before this agreement was to come into force "irregular" Polish troops under an "independent" Polish general drove the Lithuanians out of Vilna. The Polish Government at Warsaw "disclaimed" responsibility for this action.

On March 18, 1921, by Treaty of Riga,¹² Poland and the R.S.F.S.R. extended the Polish boundaries well to the east of the Curzon Line, Poland keeping Galicia and part of White Ruthenia. It is interesing to note that at this time the Soviet Government felt that it had "emerged victorious from this struggle against the forces of counter-revolution." ¹³

⁹ Cardwell, work cited, p. 12.

¹⁰ Martin, work cited, p. lviii, who declares that the so-called "Republic of Western Ukraine" still maintained that Eastern Galicia was an independent country under Ruthenian administration and temporarily occupied by Poland. The Poles, however, treated it as a part of Poland. Eastern Galicia was also claimed by the U.S.S.R. See Tchicherin's telegram to the Permanent Court of International Justice in the Eastern Carelia case, Permanent Court of International Justice, *Publications*, Ser. B, No. 5, Leyden, 1923, p. 14; Manley O. Hudson (ed.), *World Court Reports*, Vol. I, Washington, 1934, p. 197.

^{11 3} League of Nations Treaty Series, pp. 122-137.

^{12 4} League of Nations Treaty Series, p. 141.

¹² Great Soviet Encyclopaedia, Vol. 48, 1940, p. 247, cited by Cardwell, work cited, p. 13. The Soviet-Polish Treaty of Non-aggression of July 25, 1932, recognizes that the Treaty of Riga "remains the basis of their mutual relations and obligations." This Journal, Vol. 27 (1933), Supplement, p. 188. This answers Mr. Churchill's argument that Russia was imposed upon in 1923. Cong. Rec., as cited, p. A992, col. 3.

On January 8, 1922, a plebiscite in Vilna resulted in favor of Poland, and five days later the Council announced the withdrawal of the League commission from Vilna. On February 3, 1923, the Council laid down a provisional boundary giving Poland substantially the territory occupied by the "irregular" forces.

Both the Vilna and the Eastern Galicia questions were definitively determined by Article 1 of the decision of the Conference of Ambassadors of March 15, 1923, which established as the permanent boundary between Poland and Russia the line laid down by the Treaty of Riga and between Poland and Lithuania the provisional line drawn by the Council on February 3. It is interesting to note that, on April 5, 1923, Hugh Gibson, United States Minister to Poland, presented a note to the Polish Government in Warsaw, whereby the United States officially recognized the boundaries thus laid down.¹⁶

Thus through Pilsudski's military efforts the jurisdiction of Poland was extended, with the acquiescence of the League, the U.S.S.R., and the United States, over a strip of territory east of the original Curzon Line approximately 60 to 160 miles wide running from the southeastern end of Latvia south to the Rumanian border, including the following provinces:¹⁷

From	Russia:	.*
	Wilno	11,176.8 sq. mi.
	Nowgoródek	8,945.6
•	Białystók (eastern half)ap.	6,000.0
	Polesia	14,218.2
	Wołyń	13,795.0
From	Austria:	54,135.6
	Tarnopol	6,305.8
	Stanisławów	6,528.6
	Lwów (eastern half)ap.	5,000.0
		17,834.4

This territory of approximately 72,000 square miles contained approximately 5 million Ukrainians (Little Russians or Ruthenians), 1½ million White Russians, 3 to 1 million Germans, a considerable number of Lithuanians and 3½ million Jews out of a population of 28 million. Included in this area are the cities of Vilna, Stołpce, Grodno, Pinsk, Brest-Litovsk and Lwów.

Thus the matter stood until the Fourth Partition of Poland in 1939 between Germany and the U.S.S.R. A Non-aggression Pact was signed between

¹⁴ The Washington Post, Jan. 11, 1922, p. 5; Le Temps, Jan. 13, 1922, p. 2.

¹⁵ League of Nations, Monthly Summary, March 1923, p. 60; L'Europe Nouvelle, April 7, 1923, p. 443; Le Temps, March 22, 1923. For a bibliography of documentation of the Polish-Lithuanian controversy, see Malbone W. Graham, New Governments of Eastern Europe, New York, 1927, p. 382, note 8.

¹⁶ Current History, Vol. 18, May 1923, p. 348; Cardwell, work cited, p. 18.

¹⁷ Saucerman, work cited, p. 176, and Plate A.

these two countries at Moscow, on August 23, 1939, 18 followed on September 28, 1939, by a Border and Friendship Treaty. 19 The Non-aggression Pact was terminated by Germany's declaration of war on the U.S.S.R. on June 22, 1941. 20 Poland immediately indicated her willingness to resume friendly relations with the U.S.S.R. Accordingly, on July 30, 1941, an agreement was signed at London between Poland and the U.S.S.R., under Article 1 of which—

The Government of the Union of Soviet Socialist Republics recognises the Soviet-German treaties of 1939 as to territorial changes in Poland as having lost their validity. The Polish Government declares that Poland is not bound by any Agreement with any third Power which is directed against the U.S.S.R.²¹

Since that time the representatives of the Soviet Government and the representatives of the Polish Government in London have signed a number of multilateral agreements, which, together with the very treaty of 1941 itself, show that the Soviet Government recognized the representative character of the Polish Government in London. For instance, among the original signatories of the United Nations Declaration of January 1, 1942, which embodied the principles of the Atlantic Charter, were Maxim Litvinoff, Soviet Ambassador in Washington, and Jan Ciechanowski, Polish Ambassador in Washington. Among the forty-four nations whose representatives assembled in the East Room of the White House in Washington on November 9, 1943, to sign the agreement for the United Nations Relief and Rehabilitation Administration were Poland and the U.S.S.R.²³

This is a brief summary of the background of that part of the statement made by Prime Minister Churchill, President Roosevelt, and Marshal Stalin at the conclusion of the Crimea Conference at Yalta, on February 11, 1945, concerning Poland. The text of that statement, so far as it concerns Poland, reads as follows:

- ¹⁸ Text in this Journal, Vol. 35 (1941), Supplement, pp. 36-37.
- ¹⁹ Text of treaty, declaration and accompanying documents in *The New York Times*, Sept. 29, 1939, pp. 1 and 4; *The Times*, London, Sept. 30, 1939, p. 5.
- ¹⁰ Text of Hitler's proclamation, Von Ribbentrop's statement and Molotoff's statement, in *The New York Times*, June 23, 1941, pp. 4, 6 and 10.
 - ²¹ Text in Cardwell, work cited, p. 115.
- ²² Department of State Bulletin, Vol. VI, No. 132, Jan. 3, 1942, pp. 3-4; War Documents, U. S. Dept. of State Pub. No. 2162, Washington, 1944, p. 2; this JOURNAL, Vol. 35 (1941), Supplement, pp. 191-192.
- ²² Department of State Bulletin, Vol. IX, No. 229, Nov. 13, 1943, p. 317; War Documents, p. 25; this JOURNAL, Vol. 38 (1944), Supplement, p. 39.
- Department of State Bulletin, Vol. XII, No. 295, Feb. 18, 1945, pp. 215-216; Crimean Conference, Sen. Doc. No. 8, 79th Cong., 1st Sess., Washington, 1945, p. 5. The text given here is that printed in the Bulletin, with the extension of the abbreviations of the names of countries; the text in the Senate Document varies in many respects, chiefly in punctuation and capitalization.

A new situation has been created in Poland as a result of her complete liberation by the Red Army. This calls for the establishment of a Polish provisional government which can be more broadly based than was possible before the recent liberation of Western Poland. The provisional government which is now functioning in Poland should therefore be reorganized on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad. This new government should then be called the Polish Provisional

Government of National Unity.

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M. Molotov [Soviet People's Commissar for Foreign Affairs], Mr. Harriman [United States Ambassador in Moscow], and Sir A. Clark Kerr [British Ambassador in Moscow] are authorized as a commission to consult in the first instance in Moscow with members of the present provisional government and with other Polish democratic leaders from within Poland and from abroad, with a view to the reorganization of the present government along the above lines. This Polish Provisional Government of National Unity shall be pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot. In these elections all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates.

When a Polish Provisional Government of National Unity has been properly formed in conformity with the above, the government of the Union of Soviet Socialist Republics, which now maintains diplomatic relations with the present provisional government of Poland, and the Government of the United Kingdom and the Government of the United States of America will establish diplomatic relations with the new Polish Provisional Government of National Unity, and will exchange ambassadors by whose reports the respective governments will be kept informed about the situation in Poland.

The three heads of government consider that the Eastern frontier of Poland should follow the Curzon line with digressions from it in some regions of 5 to 8 kilometers in favour of Poland. They recognize that Poland must receive substantial accessions of territory in the North and West. They feel that the opinion of the new Polish Provisional Government of National Unity should be sought in due course on the extent of these accessions and that the final delimitation of the western frontier

should thereafter await the peace conference.

This statement immediately suggests a number of questions. Why should the "complete liberation" of Poland "call for the establishment of a Polish provisional government," when the Soviet Government as late as August of 1943 was on amicable terms with the Polish Government in London? What has the Polish Government in London done to warrant the recognition of a rival Provisional Government in its place by the Soviet Government? If there was need of the government being "more broadly based than was possible before the recent liberation," why could not the Polish Government in London "be reorganized on a broader democratic basis with the inclusion of democratic leaders from Poland itself" rather than a Provisional Government set up in Poland by the Soviet Government?

Why should the proposed "commission" of three "consult in the first instance in Moscow"? Why should it not do its consultations in London or in Poland? Will the "free and unfettered elections . . . on the basis of universal suffrage and secret ballot" be like the "free" plebiscites held in Estonia, Latvia and Lithuania? Latvia, for example, signed a 10-year Pact of Mutual Assistance with the Soviet Government on October 5, 1939,25 yet parliamentary elections shortly afterwards resulted in 97.6 per cent Communist vote, although the population was 55 per cent Protestant and 24½ per cent Catholic.26 It is not strange that the new parliament asked to be incorporated in the U.S.S.R. or that the latter acceded to the request on August 5, 1940.27

Why does the Yalta statement qualify the phrase, "the Government of the Union of Soviet Socialist Republics," with the phrase, "which now maintains diplomatic relations with the present provisional government of Poland," and not qualify the phrase, "the Government of the United Kingdom and the Government of the United States of America," likewise with a phrase, "which now maintain diplomatic relations with the Polish Government in London"?

Why should "the three heads of government consider that the Eastern frontier of Poland should follow the Curzon line," when the existing frontier had been accepted by the U.S.S.R. by the Treaty of Riga of 1921, confirmed by the Treaty of Non-aggression of 1932, had been accepted by the United Kingdom by the decision of the Conference of Ambassadors of 1923 and had been accepted by the United States by Minister Gibson's note of 1923? Was it moral qualms that induced the addition of the sop, "with digressions from it in some regions of 5 to 8 kilometers in favor of Poland"? ³⁸ If the boundary of 1923 had been acceptable to the three Governments for over a score of years, why revert to a discredited "boundary"? If the Curzon

²⁵ Text in The New York Times, Oct. 6, 1939, p. 9; The Times, London, Oct. 6, 1939, p. 7; Department of State Bulletin, Vol. I, No. 20, Nov. 11, 1939, pp. 542-543.

26 World Almanac and Book of Facts for 1944, p. 744.

³⁷ Lithuania likewise signed a 15-year Pact of Mutual Assistance with the U.S.S.R. on Oct. 10, 1938. Text in *The New York Times*, Oct. 11, 1939, p. 6; *The Times*, London, Oct. 12, 1939, p. 7. Yet parliamentary elections shortly afterwards resulted in 99.1 per cent vote for the Working People's Bloc, although the population is 80½ per cent Catholic, 9½ per cent Protestant and Calvinist, 7½ per cent Jews and 2½ per cent Greek Orthodox. The new parliament asked to be incorporated in the U.S.S.R., which acceded to the request on August 3, 1940.

Estonia signed a 10-year Pact of Mutual Assistance with the U.S.S.R. on Sept. 28, 1939. Text in The New York Times, Sept. 29, 1939, p. 8; The Times, London, Sept. 30, 1939, p. 5; Department of State Bulletin, Vol. I, No. 20, Nov. 11, 1939, pp. 543-544. Yet parliamentary elections shortly afterwards resulted in 92.9 Communist vote, although the population is 78½ per cent Lutheran and 19 per cent Greek Orthodox. The new parliament asked to be incorporated in the U.S.S.R., which acceded to the request on August 6, 1940.

¹⁸ Mr. Churchill makes much of the fact that at Yalta "It was made clear that all such minor alterations would be at the expense of Russia," and not, as Stalin had suggested in Moscow as far back as October 1943, "in either direction." *Cong. Rec.*, as cited, p. A991, col. 1.

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Line was considered just, why make concessions "in favour of Poland"? Is it an admission of guilt to recognize that by way of compensation "Poland must receive substantial accessions of territory in the North and West"? 29 Can one wrong done to an ally be righted by another wrong done to an enemy? Why be so definite in delimiting the eastern frontier and yet "feel . . . that the final delimitation of the western frontier of Poland should . . . await the peace conference"?

Many of these questions must have been in the mind of Prime Minister Churchill, when he reported on the Crimea Conference to the British House of Commons on February 27, 1945, for he devoted no less than 54 paragraphs (approximately 4,000 words) to "the question of Poland." ³⁰ Many of these questions must also have been in the mind of President Roosevelt in his address before a joint session of the Senate and House of Representatives on the Crimea Conference on March 1, 1945, ³¹ for, although he devotes only 9 paragraphs (approximately 700 words) specifically to the Polish question, he made no less than twelve extemporaneous interpolations into his prepared address.

The President frankly admits that the decisions on boundaries were a compromise and he explains by way of interpolation:

I did not agree with all of it by any means. But we did not go as far as Britain wanted in certain areas; we did not go as far as Russia wanted in certain areas; and we did not go as far as I wanted in certain areas. It was a compromise.

Nothing is said about not going as far as Poland wanted, although the second point of the Atlantic Charter embodied in the United Nations Declaration to which the three great Powers and Poland were original signatories stipulates that "they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned," and the first point stipulates that they "seek no aggrandizement, territorial or other," and the third point stipulates in part that "they respect the right of all peoples to choose the form of government under which they will live." ³²

²⁹ Mr. Churchill filled this in by specifying "the great city of Danzig and the greater part of East Prussia west of Koenigsberg and south, and a big wide sea front on the Baltic." Work cited, p. A993, col. 2. Mr. Roosevelt filled it in by saying extemporaneously: "East Prussia—most of it—will go to Poland. A corner of it will go to Russia; also—what shall I call it—the anomaly of the Free State of Danzig—I think Danzig would be a lot better if it were Polish." Work, cited, p. 1655, col. 2.

³⁰ Complete text of his address printed by Rep. John E. Rankin, in *Cong. Rec.*, 79th Cong., 1st Sess., March 1, 1945, pp. A990-A996.

¹¹ Complete text in *Cong. Rec.*, 79th Cong., 1st Sess., March 1, 1945, pp. 1652-1656; without interpolations, *Department of State Bulletin*, Vol. XII, No. 297, March 4, 1945, pp. 321-326 and 361.

³² Atlantic Charter: War Documents, U. S. Dept. of State Pub. No. 2162, Washington, 1944, p. 1; Department of State Bulletin, Vol. V, No. 112 (Aug. 16, 1941), pp. 125-126; this JOURNAL, Vol. 35 (1941), Supplement, pp. 191-192.

United Nations Declaration: War Documents, pp. 2-3; Department of State Bulletin, Vol. VI, No. 132 (Jan. 3, 1942), pp. 3-4; this JOURNAL; 36 (1942), Supplement, pp. 191-192.

As Clarence K. Streit significantly remarks—

The parallel that 1945 is drawing with 1939 is much too sharp to fail to serve aggressors again and again. In 1939 Hitler sought to take Polish territory in the west and gave Russia Polish territory in the east in compensation, to buy its neutrality. We Americans held up our hands in horror then, and the British thought the Nazi act so heinous that they went to war against Germany. In 1945 Stalin seeks the same territory in the east, and offers to compensate Poland with German territory. And the President of the United States and the Prime Minister of Britain approve this, and gain considerable support for it at home.²³

It is difficult to see how the Yalta decision on Poland squares with the Dumbarton Oaks Proposals for the Establishment of a General International Organization with membership limited to "peace-loving states" (Chapter III, par. 1),³⁴ with a declaration of war against Germany before February 28, 1945 as the test of being "peace-loving." Poland was the first nation to offer resistance to Germany. As late as November 1943 she signed multilateral United Nations agreements, such as UNRRA. She was officially given the Dumbarton Oaks Proposals with a request for comments, which she presented to the Department of State on February 10, 1945, the day before the announcement of the Yalta decision. And yet she alone of the United Nations has not been invited to participate in the San Francisco meeting on April 25. Perhaps the most hopeful sign is contained in the statement of Secretary Stettinius on United States policy toward Poland on December 18, 1944, in which he declared that—

It has been the consistently held policy of the United States Government that questions relating to boundaries should be left in abeyance until the termination of hostilities.

And while he admits that—

... In the case of the future frontiers of Poland, if a mutual agreement is reached by the United Nations directly concerned [and which United Nation is more directly concerned than Poland?], this Government would have no objection to such an agreement which could make an essential contribution to the prosecution of the war against the common enemy. . . . The United States Government continues to adhere to its traditional policy of declining to give guarantees for any specific frontiers. . . . 38

HERBERT WRIGHT

²² Letter to the Editor, The Evening Star, Washington, Feb. 29, 1945.

^{**} Dumbarton Oaks Documents on International Organization, U. S. Dept. of State Pub.

No. 2192.

Le Department of State Bulletin, Vol. IX, No. 230 (Nov. 20, 1943), p. 368.

³⁶ James B. Reston, "Poles in London Ask Oaks Revision," The New York Times, Feb. 11, 1945, p. 23.

³⁷ Department of State Bulletin, Vol. XII, No. 298 (March 11, 1945), p. 395. Washington Times-Herald, March 5, 1945, p. 2.

³⁸ Department of State Bulletin, Vol. XI, No. 287, Dec. 24, 1944, p. 836.

VIENNA AS HEADQUARTERS OF THE NEW LEAGUE

The Dumbarton Oaks Proposals contain a single reference to the possible seat of the new international organization, by requiring 1 that "each state member of the Security Council should be permanently represented at the headquarters of the Organization." The choice of the seat of the Organization has not been made yet and this problem certainly belongs to the "several other questions still under consideration," mentioned in the final note of the Proposals.

While other problems are certainly more fundamental the question of the seat of the new organization is an important one; important materially as the location of the Secretariat General, the archives, and many other permanent institutions, important as the seat of the Security Council, as the probable meeting place of many organs and conferences, without excluding the possibility of meetings at other places. Even the Inter-American System, of which the principal and also many special conferences meet at different capitals, has its headquarters at Washington, seat of the Pan-American Union and its Governing Board, of other Pan-American agencies, and the meeting place of many special Inter-American conferences. The question of the seat is also important psychologically as a symbol of the tendencies of the new organization and because of the influence of the city in which it sits on the spirit of the delegates. It was largely for these reasons that not Brussels, capital of a belligerent country, but Geneva in neutral Switzerland was chosen as the seat of the League of Nations.

Unfortunately it is very unlikely that Geneva will be the seat of the new Organization. Such arguments as that Geneva is too narrow, too provincial, too rigidly Calvinistic and boresome, seem unjust to this writer, who loves the beautiful city on Lac Leman, with its distant view of Mont Blanc. Equally the arguments that Geneva stands identified with the failure of the League of Nations are not convincing. The real reasons against the choice of Geneva are political ones: on the one hand strong Russian dislike, on the other hand, perhaps, the unwillingness of Switzerland herself, fearing the danger to her permanent neutrality.²

Under these circumstances it is submitted that Vienna would be an excellent choice. This idea is by no means new. The idea of transferring the seat of the League from Geneva to Vienna was propagated already before 1930. The idea of making Vienna the headquarters of the new international organization has recently been strongly defended by various writers. But

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¹ Chap. VI, Sec. D, par. 1.

² Botschaft des Schweizerischen Bundesrates betreffen den Beitritt zum Völkerbund, October 4, 1919 (Schweizerisches Bundesblatt, 1919, Vol. IV, pp. 609-610).

⁹ Vienna as the Capital for Peace, by Dorothy Thompson, November 22, 1944; Miss Thompson goes so far as to propose that the whole Republic of Austria be made a World District of Columbia. See also Editorial "A Capital for a New League," New York Times, December 15, 1944, p. 118.

it is of particular importance that the Soviet Union is reported 4 as favoring Vienna.

There is no doubt that the principal United Nations are well-disposed toward Austria. In his Proclamation of May 27, 1941, the President of the United States, saying "that we do not forget the silenced peoples, those peoples spiritually unconquered," mentioned the Austrians first. Equally Prime Minister Winston Churchill in his Mansion House speech of November, 1940, named Austria first of "all the countries with whom or for whom we drew the sword." The United States has never recognized the forcible annexation of Austria. In Moscow on November 1, 1943, the United States, Great Britain, and the Soviet Union joined to proclaim "that they wish to see reëstablished a free and independent Austria."

The reasons for Russian advocacy of Vienna, as reported, are all political and economic: Vienna's situation at the heart of the trouble center of the world, an excellent spot from which to watch the development of post-war Germany and near enough to Berlin so that the Germans can watch the other nations working on the problem of maintaining peace; that Vienna has the necessary buildings and transportation facilities; that Austria must have much more political and economic support from the Allies than she got after the first World War; that the mere fact of making Vienna the headquarters of the new League would provide Austria with a lucrative tourist trade and give her a sense of security.

All these arguments are sound and reveal already the double aspect of the question: what Vienna could mean to the League and what this decision could mean to Austria. The geographical position of Vienna in the heart of Europe, on the cross-roads from west to east and from north to south, not too far from western and southern Europe, yet near to the east and to the Balkans, is certainly ideal. Vienna has also the necessary transportation facilities. Vienna, as Winston Churchill, once said, "the ancient capital of a once mighty empire, is the ganglion nerve center of the trade and communications of all countries of the Danube Basin and others beside." Magnificent palaces,—the Hofburg, the Castle of Schönbrunn, the Belvedere Palace,—could provide a splendid frame for the new organization.

It is equally true that the choice of Vienna would go far toward solving the "Austrian problem." For the inter-war Republic of Austria, a little Alpine country of seven million inhabitants, with an enormous capital, meant for a great empire, needing to import the greater part of her food and nearly all her raw materials, cut off from export possibilities through high tariff barriers, was never able to live by herself economically; all her governments from the end of 1918 onward, of whatever political complexion, had as their primary

New York Times, Dec. 14, 1944, pp. 1; 5.

⁵ Herbert Wright, "Attitude of the United States toward Austria," United States Congressional Documents, House Document 477, 78th Cong., 2nd Sess., and "The Legality of the Annexation of Austria by Germany," this JOURNAL, Vol. 38 (1944), pp. 621-635.

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problem how to secure for their people the bare necessities of life. The remark of Viscount Cecil in the House of Lords on February 2, 1943, is also true: "All of us must feel that the Austrian people have been treated extraordinarily badly during the last twenty years."

But all of these arguments, true as they are, must be supplemented by spir-`itual' considerations. While no one overlooks the many errors, mistakes, and failures of the great and the small Austria or the weaknesses and shortcomings of the Austrian character, it has been recognized at all times that Austria is essential for Europe. That was, as far as the old Austria goes, the opinion of Napoleon and Talleyrand. Benjamin Disraeli said in the House of Commons on July 25, 1856, that "the maintenance of the Austrian Empire is necessary to the independence, to the civilization, and even to the liberties of Europe." Bismarck was firmly convinced of the necessity of Austria. František Palacky coined the phrase, that if Austria did not exist, it would have to be invented, a phrase much later repeated by the Frenchman Charles Benoist, and a phrase still quoted in 1927 by Thomas G. Masaryk. Austrian armies had valiantly fought on many battlefields, the pre-war Austria was the one non-expansionist Great Power. Lord Salisbury spoke of "our ancient friend Austria" and said on October 18, 1879: "I believe the best hopes of stability and peace of Europe rest on the strength and independence of Austria." Even of the small Republic of Austria many were convinced that she was the "keystone of the European arch" (Sir Austen Chamberlain, Seton-Watson), that "her fate will determine the fate of Europe" (Jules Basdevant).

The great Austria was a Europe within a Europe. The geographical position of Vienna, where Marcus Aurelius died in 180 A.D., through which the Crusaders marched, which defended western civilization against the Avars, and again against Islam in 1529 and 1683, joined by the gallant Polish King Jan Sobieski, the capital of the Holy Roman Empire, "around which," as Churchill said, "the old gold luster of a thousand years' preëminence still lingers," determined also its history. Her mission was to defend western Europe and to bring western European culture to the east of Europe. It retained something of the spirit of universal mankind, inherited from the Roman and Holy Roman Empires and from the Catholic Church. It came into being prior to the rise of modern nationalism. Austria, it has been rightly said, is more than a country; it is preëminently an idea. And as an idea it will live.

Empires come and go; that is the inevitable march of history. And the Austrians recognized it when the hour of their Empire had come. Heinrich Lammasch, the great international lawyer, the President of the Tribunal in the North Atlantic Fisheries Case between Great Britain and the United States, consented to become the Emperor's Prime Minister, in order to preside over the liquidation of the Austro-Hungarian Empire, with the only object, successfully achieved, of making this liquidation a peaceful one.

And post-war Austria, miserably as she was living, was free from wars, free from civil disturbances. If there is any peace-loving nation in Europe, it is Austria. Almost immediately after the dismemberment of greater Austria the small Austria was in very friendly relations with all the succession-states and all others. She was the first ex-enemy to be admitted into the League of Nations. In her participation in the League's work, in her prompt and well-considerered replies to the League, in her ratification of League instruments, she held a very high rank among all the members. Together with Czechoslovakia she occupied a leading place in the fulfillment of her international minorities obligations.

There was little revisionism in post-war Austria, although she felt keenly the tragedy of her fate. There was not the slightest attempt or even a dream of rebuilding the Empire. Out of a more than two-thousand-year-old history she felt that what Ottokar Czernin, her Foreign Minister during the first World War, wrote in his Memoirs was true: "Austria-Hungary's clock had definitively come to an end." Apart from being able to live, her most important task was to preserve the standard of her culture. "We remember the charm, beauty, and historic splendor of Vienna," said Winston Churchill on February 18, 1942, "the grace of life, the dignity of the individual. All the links of past generations are associated in our minds with Austria and Vienna."

It is as a center of culture that Vienna has its greatest importance. Edouard Herriot wrote in 1929: Dans l'ordre artistique, L'Autriche, par son passé, par les qualités si précieuses de sa population et de son élite, par sa culture, occupe une place de premier rang. Luigi Pirandello wrote in 1934 that "Austria is indisputably more than ever the cultural center of Europe." And in the annexation year, 1938, Paul Painlevé wrote: L'Autriche est un foyer de l'esprit qui ne doit s'éteindre.

The Austrian, German by language, is a very particular German. The type of the Austrian personality is a type of its own, extremely different from the German type. This has been clearly seen and expressed by Austrians and by non-Austrians, including Germans. Werner Sombart speaks of the "peculiar character of the Austrian culture." Count Hermann Keyserling says that "the Austrian spirit is the antithesis of the Prussian; its mode of life lies in laissez-faire, not in action; in softness, and not in hardness." There is a distinct Austrian type, writes the French international lawyer Jules Basdevant; while he speaks German, the Austrian has a clear-cut individuality of his own.

⁶ In his beautiful "Speech on Austria" the Austrian poet Anton Wildgans put forward in poetic formulation and with deep feeling the two outstanding merits of Austria and Vienna: a great tradition of culture and the coming into being of a new human type: the Austrian man, German by language, but European by history, tradition, culture and temper. (Anton Wildgans, Rede über Osterreich, Vienna, 1930.)

⁷ La condition internationale de l'Autriche, Paris, 1935, p. 10.

This particular and unique Austrian and Viènnese type is an outcome of environment and history. The German-speaking Austrian of the old and the new Austria is the only non-nationalistic national in Europe. He loves his country, the green Styria, the beautiful Salzburg, the glorious Tyrol. It is the beauty of nature, in the midst of which Vienna is situated, on the Danube, at the foot-hills of the Alps, ending in the lovely Vienna Woods, which has shaped both the Viennese character and the art of its artists.8 It is geographical position and history which have prevented the Austrian from becoming nationalistic: the mixture of races—as a result of which nothing could be more un-Austrian, more anti-Austrian, than racial ideology—and the coming together of many cultural influences from western, southern, and eastern Europe—Spanish, French, Dutch, Italian, Slav, Magyar. The Austrian culture thus became a blending, on German background, of Europe's culture, making the Austrian and the Viennese an anti-nationalist, antifanatic, tolerant, and humane type, whose motto is "to live and to let live." Vienna always has been and is a cosmopolitan city; of all great European cities Paris is Vienna's true sister, notwithstanding the difference of language. But Vienna is more than a cosmopolitan city—for cosmopolitanism can remain restricted to external things; it is Catholic, not only in religion, but in the textual sense of this Greek word: universalistic. The Viennese is made out of the wood of Aristide Briand's "bon Européen." The Viennese is free from hatred.

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Vienna has always stood for the things of the spirit: the achievements of Vienna University, with the world famous School of Medicine, the Vienna School of Economics, the Vienna School of Jurisprudence; its wonderful architecture, its great literature, its leading theatres and music. And everywhere we note the blending of German culture with many European cultural influences. Walther von der Vogelweide, the greatest German Minnesinger of the Middle Ages, was an Austrian, from Bozen, in the German South Tyrol. It was in Vienna that, at the end of the 18th century, the first and greatest German national theater was created, the Burgtheater. In Vienna wrote Grillparzer, Hebbel, Raimund, Nestroy, Anastasius Grüm, Nikolaus Lenau; Austrians were Hamerling, Rosegger, Anzengruber, Saar; and in recent times, to quote only a few names, it was in Vienna that Bahr, Schnitzler, Hofmannsthal, Wildgans, Schönherr, Stefan Zweig, Franz Werfel wrote.

On the other hand, Italian artists created the beautiful Austrian Baroque, as seen in Salzburg and many Vienna palaces. From the far-flung Hapsburg domains came the wonderful Dutch paintings, the great works of Velazquez into the Vienna museums, as well as the magnificent Gobelins. Long before the "Vienna period" in the history of music, Vienna was the great center of Italian opera; famous Italian operas were first performed in Vienna, Italian

Hast Du vom Kahlenberg dir rings das Land besehn, So wirst du, was ich bin und was ich schrieb, verstehn. Franz Grillparzer.

composers and Italian libretti writers (Metastasio, Calzabigi, Lorenzo da Ponte) lived at the Court of Vienna. And then it was in Vienna that much of the world's whole possession in great music was created: Haydn, Mozart, Gluck, Schubert, Beethoven, and later Brahms, Bruckner, Hugo Wolf, Goldmark, Kienzl, Gustav Mahler, Arnold Schönberg and many others. Richard Strauss, who built his house in Vienna, wrote the musical glorification of Vienna in his "Rosenkavalier," the famous waltz of which has, according to his instructions in the orchestra score, to be played with the "Vienna élan of the violins." The full character of Vienna lies in the waltzes of Johann Strauss and in Vienna's popular music from Johann Strauss to Franz Lehar we feel also something of the great musical qualities of the Czechs, the fine fire of the Magyars.

In the years of her greatest material distress, immediately following the first World War, Austria found it possible to uphold the standard of her University, museums, theatres, art, literature, music. While Vienna had developed to an advanced point the art of living, the Viennese were obediently bowing in these years to the necessity of a meager diet and to many other privations and sufferings in the material field. But when the government tentatively announced that the Vienna Opera would perhaps be able to play only ten instead of eleven months the Viennese clearly indicated that this would not be tolerated. The City of the Vienna Congress, the easy-going city of luxury and good living, displayed its heroism in carrying the heaviest material burdens. But music, great music, could not be omitted: Musicam facere necesse; vivere non necesse.

Vienna as headquarters of the new international organization would mean economic advantages to Austria, greater political security, yes; but it would mean more: it would mean a new sense of life for Austria, a new mission. Vienna could give to the new organization geographical position, adequate buildings and communication facilities, yes; but it could give more: it could give its friendliness, its spirit of politeness and of hospitality to all states and nations, outcome of centuries of tradition. It could offer the qualities which we expect from the new organization: love, not hatred; tolerance and humanism, not fanaticism; universalism, not nationalism; culture, tradition, beauty, the triumph of the spirit over matter. For while constitutions, economic plans, and so on are all very necessary and indispensable, it must be clearly recognized that the better world for which a tormented mankind is anxiously hoping must be primarily born out of a renovation of the spirit.

Josef L. Kunz

SOME LEGAL QUESTIONS CONCERNING WAR RELOCATION

The United States Supreme Court had occasion on December 18, 1944, in two different cases to pass upon Constitutional rights in a situation which was in some respects international in character. The questions at issue grew out of action taken for the purpose of moving, from their places of residence

on the Pacific Coast, more than a hundred thousand persons of Japanese ancestry. About one-third of the number were civilian enemy aliens. Camps provided wartime homes wherein those of doubtful loyalty to the United States might be supervised, and from which others might eventually be reabsorbed, according to the plan of the War Relocation Authority, into normal American life. Certain aspects of the general experiment have already been discussed by this writer. The two recent decisions have to do more with Constitutional than with international law, the petitioner being in each case an American citizen. There was, however, a reference to international law by a member of the Court and the judges evinced a concern for the liberty of the individual which is consistent with the function of law in the broadest sense and with the basic objectives of the United States in the present international struggle.

The case of Toyosaburo Korematsu v. United States 2 involved an American citizen who had been convicted of violating a military commander's order by remaining in a military area which persons of Japanese ancestry had been ordered to leave.* The conviction having been upheld by the Circuit Court of Appeals for the Ninth Circuit, the Supreme Court on certiorari also affirmed the judgment. Speaking through Mr. Justice Black, the majority of the judges found that the exclusion order in question was valid under the Act of Congress of March 21, 1942.4 That legislation provided penalties for the violation of orders relating to military areas or zones. The Act and the orders issued pursuant to it were, in the language of the opinion, "aimed at the twin dangers of espionage and sabotage." The Act of Congress was found to be Constitutional, as it had been in the earlier case of Kiyoshi Hirabayashi v. United States, which involved a curfew order. The opinion contains statements to the effect that there was an unascertained number of disloyal persons in the Japanese-American group, that approximately five thousand American citizens of Japanese ancestry had refused to swear unqualified allegiance to the United States and renounce allegiance to the Japanese Emperor, and that several thousand evacuees had requested repatriation to Japan (although it is not stated how many of these were American The Court restricted its holding to the specific order which the petitioner had violated, and declined to pass upon the whole subsequent detention program in assembly and relocation centers. The decision upheld the exclusion order "as of the time it was made and when the petitioner violated it." In a concurring opinion, Mr. Justice Frankfurter contrasted the respective spheres of action of military authorities and of judges. find that the Constitution does not forbid the military measures now complained of," he observed, "does not carry with it approval of that which Congress and the Executive did."

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¹ This Journal, Vol. 38 (1944), pp. 402-406.
² 65 Sup. Ct. Rep. 193.

Three members of the Court dissented. Mr. Justice Roberts thought this was a case of "convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States." The majority opinion had included the statement that it was unjustifiable to call the assembly and relocation centers concentration camps "with all the ugly connotations that term implies." Mr. Justice Roberts, however, referred to "so-called Relocation Centers" as "a euphemism for concentration camps." He found that the petitioner was faced with two conflicting orders which "were nothing but a cleverly devised trap to accomplish the real purpose of the military authority, which was to lock him up in a concentration camp." Mr. Justice Murphy, in a separate dissenting opinion, urged that it was essential that there be definite limits to military discretion, especially where martial law had not been declared. He pointed to the Commanding General's Final Report on the evacuation from the Pacific Coast area to show that the forced exclusion was the result of an erroneous assumption of racial guilt rather than real military necessity. Time and military necessity as factors in the situation were not, he thought, so urgent as they had been represented to be in attempted justification of the failure to conform to Constitutional due process. Mr. Justice Jackson's dissenting opinion stressed as fundamental the assumption that guilt is personal and not inheritable. He considered this conviction "an attempt to make an otherwise innocent act a crime merely because the prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign." While conceding that it would be "impracticable and dangerous idealism to expect or insist that each specific military command in an area of probable operations will conform to conventional tests of constitutionality," the dissenting justice declared that he would not "distort the Constitution to approve all that the military may deem expedient." If all "permissible" military procedures were Constitutional, the Court might as well say, he thought, that any military order would be Constitutional. A judicial construction of the due process clause that would sustain the order in question was, in Mr. Justice Jackson's opinion, "a far more subtle blow to liberty than the promulgation of the order itself." He rejected the view that the guarded language of the Court in the Hirabayashi case furnished a controlling precedent, and thought that the principle of racial discrimination, applied in that instance so as to effect a mild and temporary deprivation of liberty, was now used by the majority to support very harsh measures.

On the same day that it decided the Korematsu case, the Court also decided that involving Mitsuye Endo. A petition for a writ of habeas corpus for discharge from custody in relocation camps had been denied by a lower

⁶ Cf., on the point, the present writer's statement in this Journal, Vol. 38 (1944), pp. 402-403.

⁷ Ex parte Mitsuye Endo, 65 Sup. Ct. Rep. 208.

The Circuit Court of Appeals for the Ninth Circuit had certified questions of law upon which it desired instructions. The Supreme Court held unanimously that the petitioner was entitled to the writ for release from detention. Seven of the judges, speaking through Mr. Justice Douglas, joined in an opinion which reviewed the history of relocation and particularly examined procedure in connection with leave clearance from the camps. construction of the legislation and orders was adopted which led to the conclusion that neither the executive nor the legislative branch of the Government had authorized the detention of the relator. It was noted that Mitsuye Endo, a citizen whose loyalty to the United States was unquestioned, was detained by the War Relocation Authority, a civilian agency, and not by the military. "When the power to detain," said the Court, "is derived from the power to protect the war effort against espionage and sabotage, detention which has no relationship to that objective is unauthorized." The District Court's jurisdiction to grant the writ of habeas corpus was not changed, the Supreme Court held, by reason of the fact that while the case was pending in the Circuit Court of Appeals appellant was moved from the center where she was originally detained to a center in a different judicial district and circuit.

Mr. Justice Murphy, concurring, joined in the opinion of the Court, but went further, saying that detention in relocation centers of persons of Japanese ancestry regardless of loyalty was an unconstitutional resort to racism. Mr. Justice Roberts concurred in the result but disagreed with the Court's finding that neither the executive nor the legislative arm of the Government had authorized the detention of the relator. In his judgment, this detention violated the guarantees of the Bill of Rights and especially the due process clause.

A question which received passing notice in one of the dissenting opinions in the Korematsu case was that of the dual citizenship of some of the relocated persons. Mr. Justice Murphy, in a footnote, drew attention to the fact that Japan had, in the matter of citizenship, followed the doctrine of jus sanguinis, "as she had a right to do under international law." In this connection it may be noted that, some months before these cases were decided, there had been a move to provide a choice of nationality for an individual who has American nationality and also the nationality of an enemy country. An amendment to the Nationality Act of 1940, approved July 1, 1944, provides for the loss of United States nationality under certain circumstances when the United States is at war.⁸

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^{*58} Stat. 677. Loss of citizenship may be accomplished by making in the United States "a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense." According to a recent statement approximately 6,000 of the 7,000 Japanese-Americans over 17 years old in the Tule Lake

From the decisions which have been the subject of this comment there appears the Supreme Court's attempt to balance security considerations, such as those which the majority thought were controlling in the *Korematsu* case, against the need of protecting admittedly loyal persons from unnecessary and unduly discriminatory measures, particularly when, as in the *Endo* case, the government agency immediately involved is a civilian and not a military one. In the *Korematsu* case the majority resolved the doubt in favor of the necessity of what the military authority had done. In the *Endo* case the majority rested the decision upon a construction which seemed to make it unnecessary to face the issues in the broadest form. Together, the two decisions emphasize anew that in wartime as in time of peace the liberty of the individual is properly the concern of democratic government and particularly of its judicial agencies.

ROBERT R. WILSON

VOTING PROCEDURE IN THE SECURITY COUNCIL

The comments which have been made upon the proposed voting procedure in the Security Council envisaged by the Dumbarton Oaks Proposals, as revealed on March 5,1 seem somewhat inadequate and even confused. Whether this be the heart of the new league, as has been suggested, or not, a really serious consideration of the proposed procedure will throw much light on the whole problem of maintaining peace and security.

To begin with, we are dealing still, it appears, with proposals put forward as bases for discussion. The announcement on voting procedure made by the Crimea Conference inserts the new proposal in Section C of Chapter VI of the Dumbarton Oaks Proposals without any special stipulations of inviolability, ne varietur, or similar principles. In such a situation it would seem essential to avoid two faulty extremes. While the Proposals are put forward tentatively, the delegates at San Francisco would probably risk very serious consequences if they should attempt to depart very widely therefrom in drafting the new Charter. One or more of the five dominant Powers (America, Britain, China, France, Russia) might, in such circumstances, refuse to participate in the resulting organization. On the other hand, it is certainly to be anticipated that very lively and vigorous debate will be the

segregation center and 150 Japanese-Americans in other relocation camps or communities have asked for citizenship renunciation petitions: statement of Representative Engle of California, as reported in *The New York Times*, March 20, 1945, p. 20.

Restrictive action such as that which gave rise to these cases has been followed by steps looking to the termination of the relocation experiment. Early in March, 1945, there was an official statement that 28,541 persons who had formerly been in relocation centers had reported their resettlement, and that 60,397 remained in the centers. It was also announced that the relocation centers would be closed during the present year and that persons who were not permitted to resettle would probably be transferred to the segregation camp at Tule Lake, California: The New York Times, March 7, 1945, p. 9.

Department of State, Press Release No. 201.

order of the day at San Francisco unless tremendous steam-roller pressure is applied to stifle it—in which case the whole performance will reek with a false unity. Even if one of the Powers were to refuse to go along this might not be fatal to the creation and operation of the new system in matters other than security and sanctions, and, in the latter, features of organization and formal procedure, at least in the form now proposed, count for relatively little, as will soon appear. This does not mean that voting procedure and "machinery" are unimportant in such situations, as some inexperienced or disingenuous commentators have pretended; the states by their demands and complaints show that they themselves know better; what it does mean is that the psychological and political aspects of the matter are important rather than the legal and formal aspects.

We have, moreover, no excuse to take as insincere the official profession that the Proposals are open to study, criticism, and modification, and to do so would cast doubts on the integrity of the whole enterprise. To adopt a childish "mustn't touch" attitude and stigmatize as a "perfectionist" anyone who accepts the invitation to suggest improvements in the system projected at Dumbarton Oaks is to out-Caesar Caesar with a vengeance.²

Finally this is precisely the period when such criticism may profitably be made; once the Charter is drafted there will be great resistance to its amendment for some years, as was the case with the League Covenant. And if it be argued that demanding too much at this point might result in getting nothing the answer or answers are surely plain: better no system for a time than a bad system which cannot be changed; the next decade at least will be precisely the time when war on a major scale is unlikely, thus giving some time for working out a sound system. The mistake was made in 1919 of rushing through the drafting of the Covenant so that it could be made part of the peace settlement; the result was a system with serious faults which was also very difficult to amend. Now we are witnessing an effort to speed up the process even further. This is not, alas, the only point wherein prospects for creation of a satisfactory international organization are considerably worse today than they were in 1919.

It is also argued that if America, Britain, and Russia remain united then world peace and justice will result, while if they do not that will be impossible. This seems to be a very shallow and deceptive view. If a high degree of spontaneous unity could develop among these Powers this would facilitate matters greatly, but this is somewhat doubtful. These three Powers have not been very well united at any time since August 23, 1939, certainly not Russia and Britain or Russia and America. They will be far less dependent on one another once the German and Japanese resistance is finally broken, and it will probably be better for themselves and all other countries

² Thus one voice in high quarters has held that "no one will be forgiven who prevents (sic) the setting up of some international machinery because of any specific objection" (i.e. no matter what its faults).

To try to found international order on the dominathat this should be so. tion of a somewhat artificial and certainly abnormal triumvirate is surely unwholesome and vain to the last degree. If by the argument cited it is meant that if the Great Powers spontaneously remain at peace there will be no major war then this is obviously true, and it is of course devoutly to be hoped that these Powers will not find any reason justifying war in the near. or the distant, future; but such observations do not get us very far. meant that there are no means available for inducing—intimidating or forcing—a Great Power to remain at peace if it threatens to go to war then it must be insisted that this is very far from admitted and it does not seem proper to assert a negative conclusion on the point without fullest analysis and explanation. Even if we were regretfully compelled to accept this conclusion it would be much more important to understand and explain the reasons for it than merely to proclaim it aloud with gusto, not to say satisfaction.3 If it be alleged, finally, that the Charter will be open to amendment and amendment by a process more effective than that available for amending the Covenant, as is true, it must then be pointed out that in such circumstances the great emphasis on the present proposal for voting procedure is inconclusive; the truth is, of course, that the Great Powers are given a veto also in the amendment of the Charter.

This leads to a consideration of the provisions regarding voting procedure in the Security Council actually suggested. The text released provides for a vote of seven to four on all procedural matters and the same vote "on all other matters" but "including the concurring votes of the permanent members," with the disputants required to abstain in votes connected with pacific settlement. It has been represented that this gives the permanent members of the Council a veto on sanctions action against themselves, but of course it goes much further than this and gives them a veto over sanctions action against any satellite state and even over such action under the auspices of regional organizations. Furthermore, the experience of the League with a similar provision in the Covenant makes it certain that the states regarding themselves as the beneficiaries of the provision in question will try to extend it to matters which any detached student would immediately regard as merely procedural in character.

All of this is not to imply that an effort should be made to require the Great Powers to surrender the veto power in votes in the Security Council on sanctions action. The problem goes much deeper than that and the remedy necessary also. As long as the taking of sanctions action is to be decided in each case by the Security Council little basis exists for persuading the Great Powers to renounce their right to vote in the matter. It may be

³ Incidentally such a view would destroy the basis for the demand for superior authority because of superior responsibility; if it is only smaller powers which are to be kept in line this can be done by a league of those powers themselves.

⁴ Proposals, Chap. XI.

⁶ Proposals, Chap. VIII, Sec. C, par. 2.

added also that this is neither difficult to understand, unethical, nor, finally, practically fatal. It is quite understandable politically and needs no explanation on that plane. The vote would not, moreover, constitute a vote on a question of merit or law and the maxim nemo judex in propria causa would therefore have no bearing. And practically the sanctions action will be taken if the situation demands it, veto or no veto, just as the aggressor state might be expected to resist sanctions action in any case—even, that is, if deprived of a right to vote against it—for by hypothesis the state does not admit its aggression and hence would certainly not vote in favor of sanctions. Under these circumstances the veto is of little importance to anybody and it is obvious that it is demanded not for its own value in actual operation but for its political and psychological effects. It is similarly true that the granting of a power of veto is regrettable chiefly for the appearance of the thing and its moral, or demoralizing, effect.

The provision in question has been represented as a compromise. This seems rather a loose way of describing it also. The provision might be a compromise between the conflicting policies of two or more powers or persons or between opposing principles or theories. Recent developments have left little doubt that the representatives of Great Britain and the United States at Yalta felt just about as strongly on the point as did Stalin, in spite of not having any special cause for anxiety such as that gentleman appears to have lest the world unite against Russia. It is also probable that public opinion in Britain and America—and even the politicians—would be willing to go much further in accepting international authority than the strongwilled personalities which today represent those two countries are willing Finally it is sheer nonsense to describe consent to have a dispute considered by the Council in its early stages as a concession made in exchange for the veto power in question; the time has long since passed when any state or any dictator can prevent an international body or world public opinion from passing on their behavior.

The only possible definitive solution for the problem—possible in a technological and mechanical sense—is to transfer the decision on sanctions action out of the political Council to an administrative body acting on principles and rules laid down in advance and subject to supervision and potential correction by the representative organs and especially by the judicial arm of the organization. The reasons for such transfer and its effects on the operation of the sanctions process are obvious at a glance: it specifically avoids a vote by the interested parties in the concrete case. Such a solution is almost certainly impossible of attainment, however, and would depend, for its application against a Great Power, on the existence of a tremendously powerful international police force or on power being lodged in a Military Staff body to call out forces of member states, both probably out of the question. The only approximate substitute for such a program would be to break down the process in the Council into two parts, stipulating for a

vote identifying the aggressor first—a vote by seven out of eleven or a twothirds majority—and then for action on the sanctions issue in which a state already identified as the aggressor would be excluded from voting. This seems the most promising "compromise" available although it would probably be just about as difficult to obtain acceptance by the Great Powers for such an arrangement as for exclusion from the vote on sanctions action pure and simple.

The crux of the situation lies in the willingness or unwillingness of the Great Powers to voluntarily refrain from asserting what they believe to be their power in such situations. The opinion that no international organization is possible which is both equitable and effective as long as the present tremendous disparity exists between the Great Powers and the other nations demands serious consideration. Perhaps a serious and general move allocating delegates and votes to component elements in the Great Power systems is the only real remedy. Any attempt to curb the Great Powers by imposing on them against their will the, or a, principle of sovereign equality among states is no remedy at all; besides being highly metaphysical and undemocratic such a doctrine is utterly unacceptable in political fact. Equally arbitrary and undemocratic is the Great Power demand for preponderance when based on mere force and not based on any principle ap-What is needed is the sort of conciliatory cooperation recently displayed at Mexico City. The Powers, including their peoples and their rulers, might even voluntarily accept the jurisdiction of the Security Council—without a veto—and try to behave themselves so as to avoid its appli-When that attitude is forthcoming the Powers can rely on reciprocal consideration on the part of others; as long as they persist in extreme and rigid demands they will wreck the possibility of any effective and fruitful international organization. They will not only do that: they will also provoke such opposition from small states, from medium states, and from fellow Great Powers that they will defeat their own ends. In the present world cooperation is needed by them too. And if they do not see that it will not come about.

PITMAN B. POTTER

CURRENT NOTES

THE POSITION OF THE EXECUTIVE AND ADMINISTRATIVE HEADS OF THE UNITED NATIONS INTERNATIONAL ORGANIZATIONS

This attempt to evaluate in a comparative manner the positions, functions, and conditions of service of the heads of the newly created or proposed United Nations organizations is based on an analysis of the following conventions, draft conventions, and interim agreements: General International Organization (Dumbarton Oaks Proposals); Agreement for the United Nations Relief and Rehabilitation Administration (UNRRA); draft Constitution of the Food and Agriculture Organization of the United Nations (FAO); the Articles of Agreement for the International Monetary Fund and the International Bank for Reconstruction and Development; the Interim Agreement and Convention on International Civil Aviation.*

These compacts differ from each other considerably, according to the objects of their activities, their authority, and the stage of development which they have reached. Their activities range from the general purpose and security agency outlined at Dumbarton Oaks to the International Monetary Fund and International Bank Organizations. As far as executive authority or operational functions are concerned, they comprise, secondly, all known patterns of international organization from agencies with recommendatory, coördinating, and research functions of the League type to "action organizations" of the UNRRA type—with the International Civil Aviation Organization placed midway between the two extremes. They differ, thirdly, in respect to the stage of development which they have The UNRRA agreement is in force and the agency created by it is actually in operation. The Food and Agriculture Organization runs a close second. Its constitution is at present open for approval according to the constitutional procedures of the "Nations Eligible for Original Membership" (Annex I). Other agreements are still subject to amendment but it can be assumed that the articles dealing with the administrative head or with staff questions will hardly be changed further. The most important of these schemes, the Dumbarton Oaks Proposals, are still incomplete, pending the San Francisco Conference. This is not only the case in regard to points expressly reserved for subsequent decision, but also in regard to a number of articles. Chapter X, for example, dealing with the Secretariat,

^{*} The proposed International Civil Aviation Organization was projected by a Conference which included neutrals and is therefore alone among the newly proposed agencies not conceived as a United Nations agency properly speaking.

¹ There is some doubt whether the International Bank can be considered a public international organization in the accepted meaning of the term. Students hesitated to classify its prototype, the Bank for International Settlement at Basel, among public international agencies because of the latter's semi-private character.

is evidently a skeleton article, indicative of the general attitude of the drafters rather than complete in its contents.

A comparison of these compacts from the point of view of international administrative leadership shows, generally speaking, that the experience of the League of Nations has not been lost altogether to the drafters of the new instruments.

Position of the Administrative Head

In order to appraise the position of the head of an international administration two major aspects must be constantly kept in mind: that the administrative machinery which he directs is the only permanently functioning element of international organization and that the policy-determining bodies of international organizations are not comparable to national legislatures or the executive branch of government. They are diplomatic (governmental) bodies. In international organization as we know it there is no parliament or government and it seems to this writer dangerous to speak of the UNRRA Council as a quasi-legislature as Mr. Lehman has recently done. The head of the international administration is not an international prime minister, and his closest collaborators cannot be compared to members of a He is an officer sui generis, halfway between an international statesman and an international civil servant. Serious errors in judgment are inevitable and have in fact constantly occurred in the interwar period in regard to the activities of the Secretary-General of the League because of an insufficient comprehension of the unique and unprecedented character of the position held by the administrative head of international administration.

General Powers

There is almost universal agreement that the Covenant granted the Secretary-General too little general power and that the subsequent practice did little to enlarge his powers by precedent or usage. All the instruments established or drafted during this war invest their administrative chiefs with broader powers, with one exception (International Civil Aviation). The Dumbarton Oaks Proposals stipulate in Chapter X that "the Secretary-General should have the right to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security"—thus foreshadowing a far more active rôle for the Secretary-General of the General International Organization than that granted to the League's Secretary-General. The latter, it will be remembered, was only entitled to take a step of this nature on the proposal of a member (Articles 11 and 15). Nothing is said regarding his internal powers except that "he should be the chief administrative officer of the organization." But the silence regarding the character of his internal authority and the emphasis put upon his external powers, and the general contents of this paragraph, suggest the desire on the part of the drafters of the Proposals to emphasize policy functions rather than administrative chores. The draft constitution of the Food and Agriculture Organization of the United Nations goes even farther within the operational range of that organization. It stipulates, in Article VII, that the Director General or a representative designated by him "shall formulate for consideration by the Conference and the Executive Committee proposals for appropriate action in regard to matters coming before them." Apart from the right to initiate action constitutionally vested in the Secretary-General, this text merits attention inasmuch as it lays down specifically and expressly that the authority of proposing action is not vested in the Secretary-General personally but can be delegated by him at his pleasure.

Under the UNRRA Agreement "the executive authority of UNRRA shall be in the Director General." He has full authority for carrying out relief operations; he is "responsible for the organization and direction" of measures for individual or joint action for the coördination of purchasing, the use of ships and other procurement activities, and so on. The Director General shall make periodic reports to the Central Committee and to the Council. The position of UNRRA's Director General is really a special one for two reasons: the temporary character of his task and the character of the agency he heads. Mr. Lehman has particularly emphasized this aspect by pointing out that UNRRA, in contrast to the League, is an "action organization" carrying/through active programs, and that in consequence and unlike the League the administrative head "has been given a wide grant of discretionary authority" stemming from the operational tasks of UNRRA.

In respect to the powers granted to the administrative heads the International Civil Aviation Organization merits a special place among international agencies. For it departs from the traditional pattern and splits the leadership between two persons, a President of the Council and a Secretary-General. The President is elected by the Council; he receives emoluments but has no vote. His duties are as follows, according to the text of the Interim Agreement: to "convene, and preside at the meetings of the Council; he shall act as the Council's representative; and he shall carry out such functions on behalf of the Council as may be assigned to him." The Secretary-General, on the other hand,

shall be the chief executive and administrative officer of the Organization. He shall be responsible to the Council as a whole and . . . shall have full power and authority to carry out the duties assigned to him by the Council. The Secretary General shall make periodic reports to the Council covering the progress of the Secretariat's activities. The Secretary General shall appoint the Staff of the Secretariat.

² Article 4, paragraph 1.

³ Address delivered on February 14, 1945, before the Washington Chapter, American Society of Public Administration.

⁴ Article III, Section iii.

⁵ Same, Article IV. The Secretary-General.

This division of the leadership between two officers (which is not as clearcut, however, as a first glance at the text suggests) corresponds to the division of functions between a president or chairman of the board of directors and a general manager known in Anglo-American commercial and industrial corporation practice.

The idea of a President of the Council and a General Manager or Secretary General originated with the Canadians who did most of the organizational preparation. They were probably influenced by their concept of the Aviation Organization as a powerful regulatory body, possibly an operating body administering international airlines and airports. This concept was rejected by the Conference, but the organizational idea remained and Lord Swinton supported the arrangement. He spoke of the President as a statesman and of the Secretary General as an administrator versed in technical aviation matters.

It remains to be seen whether the concept of dual leadership embodied in the Constitution of the Civil Aviation Organization will prove as effective in international administration as it is in private business, and whether it will set a precedent for a new pattern of international leadership. doubts regarding the possible effectiveness of this sytem are based not so much upon the differences between private and public business, important as they are. Such doubts are chiefly based upon psychological considera-Major difficulties are likely to arise from the human factors involved. It is unthinkable that the President of the Council and the Secretary General will both be Anglo-Saxons and therefore instinctively reconciled to the concept of divided leadership. It is obvious that such partnership would encounter considerable difficulties between persons of different background. traditions, approach, and temperament. Dual leadership would require an amount of mutual adaptability and instinctive understanding of each other's motives and actions which cannot be taken for granted in the case of persons belonging to different nationalities or races. From a practical point of view these difficulties may not appear immediately, however. sensitivity of the nations on aviation policy was only too clearly demonstrated by the long drawn-out negotiations at Chicago and it may be assumed that such questions will keep the Interim Council and its President fully occupied for a long time to come. The technical and administrative work of the Secretary General may therefore be overshadowed for a long time by the more important questions of policy. By the same token it is assumed by persons who have given much thought to the International Civil Aviation Organization that the President will emerge as the primary official of the Organization in the same way that the Chairman of a Board of Directors outranks the General Manager of a corporation. The writer of this note is rather inclined to think that a shift in favor of the administrative head is more likely to occur as a matter of natural evolution unless the Secretary General is temperamentally a mere civil servant.

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Personnel Management

The authority of the heads of the international administrative bodies in regard to staff appointments is, as a whole, constitutionally not restricted in the new compacts, although definite regulations on this point are in some cases reserved for subsequent decisions. The League Covenant empowered the Secretary-General to appoint "the secretaries and staff... with the approval of the Council." The rôle of the Council in this situation was admittedly passive. It consisted in approving the staff lists submitted at the beginning of each Council session and the value of this stipulation consisted in practice in the caution it imposed upon the Secretary-General in the selection of his personnel.

The Dumbarton Oaks Agreement is silent on this point and it remains to be seen whether the definite charter of the General International Organization will revert to the League position. This is not altogether excluded as the political significance of higher staff appointments will be incomparably greater in the General and Security Organization than in the preponderantly technical international organizations. Article IV of the UNRRA Agreement authorizes the Director General to "appoint such Deputy Directors General, officers, expert personnel, and staff at his headquarters and elsewhere . . . as he shall find necessary," without making the appointments dependent upon the approval of either the Central Committee or the A similar stipulation governs staff appointments in the secretariat of the International Civil Aviation organization. The FAO Constitution, on the other hand, reserves the definite regulation for later action by stipulating that the staff shall be appointed "by the Director General in accordance with such procedure as may be determined by rules made by the Conference." The Agreement for the International Monetary Fund makes the appointment of the staff "subject to the general control of the Executive Directors" and the Agreement for the International Bank contains an identical stipulation. Even the two Agreements for an International Fund and Bank do not go beyond stipulating a general control. They do not provide for individual approval of appointments.

The almost unrestricted authority of the Secretary-General of the League in staff matters resulted in an undue absorption of his time and thought in personnel management. This caused much concern as it was felt that some of the time and energy devoted to staff questions should have been dedicated to his major political duties. The experience led to suggestions aimed at separating the appointing authority from the Secretary-General-ship, and it is significant that this idea originated with persons of many years of practical experience in international administration. It is unlikely, however, that such a radical step will find general support. As international administration cannot depend upon any very well established traditions, too much depends on the character, the efficiency, and the homogeneity of the staff, and it is difficult to see how any outside agency could provide an

international secretariat with exactly the kind of staff which it needs. A partial solution of the problems raised in this respect might be found in the creation of some kind of central personnel board serving all the major international agencies of the future possessing a semi-autonomous status and an auxiliary character. The establishment of such an international civil service office (an office rather than a full fledged civil service commission) would facilitate the problem of recruiting international staffs and relieve the administrative heads of much of their preoccupation with details without in any manner infringing upon their authority in this respect.

Appointment and Tenure

The stipulations regarding appointment and tenure of the executive and administrative heads indicate a characteristic departure from League practice and interesting differences between the various new charters. Article VI of the League Covenant stipulates that "the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly." The corresponding provision in Chapter \dot{X} of the Dumbarton Oaks Proposals stipulates that the Secretary-General "should be elected by the General Assembly, on recommendation of the Security Council." Nothing is said regarding the procedure to be followed in this matter (unanimity on the Security Council? Simple or qualified majority on the General Assembly?) which is still left open ("under such conditions as are specified in the charter"). The UNRRA Agreement states that the Director General "shall be appointed by the Council on the nomination by unanimous vote of the Central Committee." This corresponds to the League provisions. The FAO Constitution states that the Director General "shall be appointed by the Conference by such procedure and on such terms as it may determine." The Executive Committee not being specially mentioned, it must be assumed that in the intention of the drafters of the Constitution the procedure and the terms to be fixed by the Conference at least need not provide for any participation of the Executive Committee in the appoint-The Convention on International Civil Aviation stipulates that "subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment . . . of the Secretary-General." Neither the drafters of the Convention on International Civil Aviation nor of the FAO Agreement considered the question as of sufficient importance to be the subject of a clause in the constitution.

With the exception of the UNRRA Convention none of the newly drawn international instruments contains any definite regulations regarding either tenure or termination of appointment. The League Covenant, it will be remembered, was silent on this point. The first Secretary-General was not removable. After the resignation of Sir Eric Drummond the tenure was fixed at ten years by the Assembly. The first Secretary-General served for

thirteen, the second for seven years, when he resigned under pressure from the Supervisory Commission and the President of the Council. Except for UNRRA these agreements and draft conventions reserve the decision for subsequent action. The Dumbarton Oaks Proposals provide for an incorporation of stipulations into the final text of the charter by stating that the Secretary-General should be elected "for such term and under such conditions as are specified in the Charter." The FAO Convention (Article VII) reserves the right of determining the Secretary's tenure to the Conference and the draft International Civil Aviation Convention (Article 58) to the Council. Only the UNRRA Agreement is explicit on this point by stipulating that the Director General "may be removed by the Council on recommendation by unanimous vote of the Central Committee."

Title

The majority of recent instruments, especially the Dumbarton Oaks Proposals, call the administrative head Secretary-General, which is puzzling in view of the fact that this title had been generally considered unsatisfactory as applied to the head of the League administration. It had been felt that this title was insufficiently indicative of his elevated position and tended to over-emphasize the purely administrative aspect of his position. It seems therefore surprising that the old title has been retained in spite of the general tendency to raise the status of the heads of the international organization.

UNRRA and FAO call the heads Director General (without and with hyphen respectively), which is a little better but still unsatisfactory from an international angle. Since every head of a small concern in Europe calls himself at least Director-General, the term has an undeniable commercial tinge in many countries. The connotation created by this title in the minds of Europeans will therefore certainly not be statesmanship and eminence of position.

Conclusions

The analysis of the stipulations governing the status of the heads of the international agencies thus confirms the general impression that the authority of the Secretaries-General and Directors-General has been strengthened in the new instruments as compared with the League. Only the future can show whether this formal strengthening of their position will correspond to an actual increase in power and influence in practice. The experience of the inter-war period should serve as a warning against over-rating the rôle played by formal stipulations in determining the scope of activities and the influence of the heads of international agencies. Constitutionally the powers and functions of the Secretary-General of the League and of the Director of the International Labor Office were about equal. In reality the former remained a glorified civil servant while the latter exercised considerable power and influence as an international statesman.

Apart from constitutional stipulations it will be the character of the tasks and functions of the international organizations and of the personalities put at the helm that will prove decisive for the degree of power and influence exercised by the administrative heads. In the last resort it will be the concept of international leadership held by the members of the organizations that will turn the scale. For the choice of the persons to whom the members entrust the task of international leadership will show whether they prefer high class administrative clerkship on the League pattern or international statesmanship.

EGON F. RANSHOFEN-WERTHEIMER

THE STATUS OF SOVIET FORCES IN BRITISH LAW

The system of "inter-Allied military law" which, during the present war, has been built up in Britain, has recently been supplemented by provisions relating to members of the armed forces of the Soviet Union who are present in the United Kingdom or on board any British ship or aircraft. The reason for making these provisions was probably the arrival in Great Britain of a great number of Soviet prisoners of war who, since D-day, have been liberated by the advancing armies of the western Allies. The statutory basis of their position in the municipal law of the United Kingdom is, as in the case of all other Allied forces, the Allied Forces Act, 1940, Section 1 (1) of which provides that

where any naval, military or air forces of any foreign Power allied with His Majesty are for the time being present in the United Kingdom or on board any of His Majesty's ships or aircraft, the naval, military and air-force courts and authorities of that Power may, subject to the provisions of this Act, exercise within the United Kingdom or on board any such ship or aircraft in relation to members of those forces, in matters concerning discipline and internal administration, all such powers as are conferred upon them by the law of that Power.

Under this Act, and without further authorization, it is lawful for the Union of Soviet Socialist Republics, as an Ally of Great Britain,² to set up courts martial in the United Kingdom and for those courts to try members

¹ The provisions of law relating to the status of Allied forces in Great Britain have been discussed by Colonel Archibald King in his "Jurisdiction over Friendly Foreign Armed Forces," this Journal, Vol. 36 (1942), p. 539; Kuratowski, R. K., "International Law and the Naval, Military, and Air Force Courts of Foreign Governments in the United Kingdom," in Transactions of the Grotius Society, Vol. XXVIII (1942), p. 1; and this writer "Jurisdiction over the Members of the Allied Forces in Great Britain," Czechoslovak Yearbook of International Law, 1942, p. 147, "The Status of United States Forces in English Law," this Journal, Vol. 38 (1944), p. 50, and "The Drafting of United States Nationals in Great Britain," this Journal, Vol. 39 (1945), p. 109.

² British-U.S.S.R. Agreement for Joint Action, printed in this JOURNAL, Vol. 36 (1942), Supplement, p. 58; Treaty of Alliance in the War against Hitlerite Germany and her Associates in Europe, same, p. 216.

of the Soviet forces according to Soviet law, but "subject to the provisions of this Act."

In order to accord to the Soviet military courts, their members, and witnesses appearing before them, the immunities and privileges which are the necessary pre-requisites for the administration of justice, and in order to provide for the necessary assistance to be rendered to those courts by the appropriate British authorities, express provisions had to be introduced. The Allied Forces Act, 1940, contains in Sec. 1 (3) an enabling provision, which gives power to the King in Council to apply to Allied forces the provisions regulating these questions in relation to British Dominion Forces visiting the United Kingdom which are contained in the Visiting Forces (British Commonwealth) Act, 1933. The provisions of the 1933 Act have so far been applied to Belgium, the Czechoslovak Republic, the Netherlands, Norway, Poland, Greece, Yugoslavia, France, and—with important modifications—the USA.

The Allied Forces (Union of Soviet Socialist Republics) Order, 1945, dated 22nd February, 1945, now provides that the Allied Forces (Application of 23 Geo.5.c.6) (No. 1) Order, 1940, as amended by any subsequent Order, shall have effect as if the Union of Soviet Socialist Republics were included among the Allied Powers referred to in Article 1 of that Order. The Order in question is that which applies part of the provisions of the Act of 1933 to the Allied states mentioned, other than the United States. The effect of the new Order, therefore, is that the position of Soviet forces is in British law exactly the same as that of the forces of Belgium, Czechoslovakia, the Netherlands, Norway, Poland, Greece, Yugoslavia, and France.

The Allied Forces (Relations with Civil Authorities) (No. 1) Order, 1940,⁷ and the Allied Forces (Penal Arrangements) (No. 1) Order, 1940,⁸ have also been extended to apply to the Soviet Union.

Sec. 2 (1) of the Allied Forces Act, 1940, under the heading "Saving for jurisdiction of civil courts" provides that "nothing in the foregoing section shall affect the jurisdiction of any civil court of the United Kingdom . . . to try a member of any of the naval, military or air forces mentioned in that section for any act or omission constituting an offence against the law of the United Kingdom . . ." This means that the jurisdiction of the Allied (Soviet) military courts is not exclusive, if the act committed by the Soviet soldier constitutes not only an infringement of Soviet military law but also

³ For details see the articles quoted in note 1.

⁴The Allied Forces (Application of 23 Geo. 5, c. 6) (No. 1) Order, 1940; S. R. & O., 1940, No. 1818 (Belgium, Czechoslovakia, the Netherlands, Norway and Poland); The Allied Forces (Greece and Yugoslavia) Order, 1941, S. R. & O., 1941, No. 651; the French Visiting Forces (United Kingdom) Order, 1943, S. R. & O., 1943, No. 1379; The United States of America (Visiting Forces) Order, 1942, S. R. & O., 1942, No. 966.

^{*}S. R. & O., 1945, No. 166.

⁶ Same, 1940, No. 1818.

⁷Same, 1940, No. 1816.

⁸ Same, 1940, No. 1817.

a contravention of the local British law. Moreover, an Allied (Soviet) court is not to have jurisdiction to try any person in the United Kingdom for any act or omission constituting an offence for which he has been acquitted or convicted by a British civil court [Sec. 2 (3)]. Conversely, when a person has been sentenced by an Allied (Soviet) military court the British civil court is not prevented from trying him afterwards for the same act; it is only provided that the British civil court, in awarding punishment, shall have regard to any punishment imposed on the prisoner by the allied military court [Sec. 2 (2)].

These provisions have been abrogated with regard to members of the United States forces and superseded by the United States of America (Visiting Forces) Act, 1942, which provides that "... no criminal proceedings shall be prosecuted in the United Kingdom before any court of the United Kingdom against a member of the military or naval forces of the United States of America" and which makes the jurisdiction of the American courts martial exclusive. But they apply without modification to the members of the U.S.S.R. forces.

EGON SCHWELB

REPORT OF THE SECRETARY OF THE SOCIETY ON MEETINGS OF THE AMERICAN COUNCIL OF LEARNED SOCIETIES

Boston, January 24-26, 1945*

The first day was taken up with a meeting of the Conference of Secretaries, which is an adjunct of the Council and has been meeting for over twenty years in connection therewith. The Secretaries met in the morning, had lunch together, met in the afternoon, dined together, and met again in the evening.

The discussions were very serious and lively. The score or more of persons attending were Secretaries of different Societies and Editors of their publications and discussed such matters as membership in the constituent societies, annual meetings (time, place, national or regional, independent or joint), book reviews, teaching problems, personnel in the public service, relations to other societies, and so on. A full report of the discussions will be issued by the Council.

In the course of these discussions it developed that various learned Journals issued by different Societies have been from one to six months late in the last couple of years because of conditions in the printing trade.

The Council convened on Thursday morning, the 25th, and met again in the afternoon of that day, and again on Friday morning, adjourning at 1:15 p.m. of that day.

On Thursday evening the Twenty-fifth Anniversary of the establishment of the Council was celebrated at a dinner presided over by Professor Fred N. Robinson, the Chairman of the Council. President J. B. Conant, of Har-

* Published at the request of President Coudert.

vard University, had been scheduled to speak but had suffered a slight injury and was unable to be present; his place was taken by Dean George H. Chase, who extended the greetings of Harvard University to the Council. President Howard Mumford Jones of the American Academy of Arts and Sciences spoke eloquently and wittily on the claims of the humanities to spiritual superiority not only over the physical sciences but also over their brethren the social sciences. Watson Kirkconnell, of the Humanities Research Council of Canada, spoke for his country and the early history of the American Council was briefly summed up by Dr. Waldo Leland.

Here, as in the case of the Conference of Secretaries, a fuller report will be printed by the Council in its *Bulletin*, but comment might be made here on some aspects of the meetings.

It should be recorded first that Professor Norman Padelford, to whom I had written when our Delegates and Alternates found it impossible to attend, and to whom I telephoned on my arrival in Boston, came in from the Massachusetts Institute of Technology, where he is now stationed, for the meeting on Friday morning.

One of the most important items of business was the adoption of a complete revision of the By-Laws of the Council. This involved a review of the whole organization and activity of the Council but resulted in no revolutionary change.

On the other hand, the Constitution was amended to give the Conference of Secretaries and the Executive Committee of the Council Constitutional status, which they had not previously enjoyed, and to rather increase the power of the Executive Committee. At the same time the authority of the Council over the Executive Committee was maintained and even reenforced, and a motion to reduce the representation of the constituent Societies in the Council was decisively defeated.

Extremely interesting discussions took place on proposals coming from the Advisory Board for a History of Science in the United States, for a study of American history by a group of representatives of different disciplines, for various regional studies (Oriental, Slavic, Latin American, Negro, etc.), the Dictionary of American Biography, the linguistic atlas of the United States, and various other projects. The perennial problems of financial assistance to individual scholars and grants in aid of publication were considered and acted upon, and all together the Council and constituent Societies gave every evidence of vitality, imagination, and intention to do things.

Two questions which were discussed at some length were of particular interest to our Society, namely, the protection of cultural treasures in war areas and the resumption and development of international intellectual relations after the war. The long report on the former topic fairly bristled with points of interest to students of international law although the concern of the Council and its Committee has been, of course, with the end result

rather than the procedural means to that end. I must confess that the persons concerned seemed to be unaware of the legal questions lying all about them.

Dr. Leland's brief statement concerning the resumption of international intellectual relations was very interesting and made it clear that we should soon be concerned with a real problem in this connection; the Director now intends to go to Europe later this year to explore the situation.

I hope that I will not be charged with excessive prejudice if, in conclusion, I express the strong belief that our Society should maintain and even intensify its participation in the work of the Council. I should hope that our Delegates or their Alternates could attend the annual meeting in another year. The Council needs us there to add weight and help the historians, economists, and the political scientists counterbalance the humanities and the philosophers, and our own Society can, of course, benefit from what we can learn of the activities of these other disciplines. As you of course are aware, the Council is a member of the International Union of Academies, and the monumental Dictionary of International Law projected by the Union should be of interest to all our members.

PITMAN B. POTTER
Secretary

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD NOVEMBER 16, 1944-FEBRUARY 15, 1945 (Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: B. I. N., Bulletin of International News; C. S. Monitor, Christian Science Monitor; Cmd., Great Britain Parliamentary Papers by Command; Cong. Rec., Congressional Record; D. S. B., Department of State Bulletin; Ex. Agr. Ser., U. S. Executive Agreement Series; G. B. M. S., Great Britain Miscellaneous Series; G. B. T. S., Great Britain Treaty Series; P. A. U., Pan American Union Bulletin; U. S. T. S., U. S. Treaty Series.

July, 1989

25-January 5, 1945 France—United States. Signed at Paris on July 25, 1939, a convention and protocol for the avoidance of double taxation, etc. United States ratified the convention and protocol Dec. 15, 1944. D. S. B., Dec. 24, 1944, p. 836. Text: Cong. Rec. (daily), Dec. 1 and 6, 1944, pp. 8782-8784, 9027-9029. France ratified July 29, 1939. Proclaimed Jan. 5, 1945 by President Roosevelt. D. S. B., Jan. 7, 1945, p. 38.

August, 1944

24 ETHIOPIA—UNITED STATES. Emperor Haile Selassie in a note to President Roosevelt presented as a gift to the United States a house and the land on which it stands in Addis Ababa, the present headquarters of the United States Legation. Text of letter: D. S. B., Dec. 3, 1944, pp. 654-655.

November, 1944

- 1-February 1, 1945 YUGOSLAV COMMITTEE OF NATIONAL LIBERATION—YUGOSLAVIA (in exile). Text of agreement, signed Nov. 1 in Belgrade, and annexes, signed Dec. 7, for the establishment of a Regency Council and election of a Constituent Assembly: London Times, Jan. 24, 1945, p. 3. Summary: B. I. N., Feb. 3, 1945, pp. 115-116. Text of statement of Jan. 11, 1945 by the Government in London regarding the agreement: London Times, Jan. 12, 1945, p. 4. Acting Secretary of State Grew confirmed officially Feb. 1 that the United States had encouraged elements in Yugoslavia to establish a unified régime to which the United States could accredit a diplomatic mission. Text of statement: N. Y. Times, Feb. 2, 1945, p. 8; D. S. B., Feb. 4, 1945, p. 153.
- 15 Albania—United States. Text of statement by the Acting Secretary of State relative to United States policy toward Albania's struggle for freedom: D. S. B., Nov. 19, 1944, p. 591.
- 16/December 9 France (Provisional Government) Recognition. Spain and the Vatican granted recognition. N. Y. Times, Nov. 17 and Dec. 10, 1944, pp. 8, 9; B. I. N., Dec. 23, 1944, p. 1136.
- 17 CANADA—INDIA. Signed mutual-aid agreement at Ottawa. D. S. B., Jan. 7, 1945, p. 32.
- 18 Bulgaria—United States. Relations reestablished by appointment of a United States foreign service officer, a preliminary to resumption of full diplomatic relations. N. Y. Times, Nov. 19, 1944, p. 15.
- 18 Business Conference. At closing session the Conference endorsed a report calling for an intergovernmental study of cartels and reactivization of the International Chamber of Commerce. Elected W. W. Aldrich as President of the I.C.C. Summary of activities: N. Y. Times, Nov. 19, 1944, Sec. 5, p. 6.

- 18 France (Provisional Government). French Ministry of Justice announced creation of a "high court of justice to try leaders and members of the Vichy Government for crimes committed in the exercise of their functions" (1 judge, 2 assistants, and 24 jurors from a special panel). N. Y. Times, Nov. 19, 1944, p. 29.
- 21 CHINA—ECUADOR. Announcement of repeal by Ecuador of its Exclusion Law. N. Y. Times, Nov. 22, 1944, p. 7.
- 21 Hull, Cordell. Resigned as Secretary of State. N. Y. Times, Nov. 28, 1944, p. 16; D. S. B., Dec. 3, 1944, p. 649.
- 22 BEIGIUM—FRANCE (Provisional Government). Signed agreement for the exchange of French ore for Belgian coal. B. I. N., Dec. 9, 1944, p. 1067.
- 22/December 20 Canada—United States. Effected agreement by exchange of notes at Washington for the disposition of defense facilities established in Canada by the United States. Texts: D. S. B., Feb. 4, 1945, pp. 162-163.
- 24 CZECHOSLOVAKIA (in exile). Government in London broadcast its law establishing interim administration of liberated territory as decreed by President Beneš after approval by the Cabinet and State Council. Text: News of Czechoslovakia (N. Y.), Dec. 1, 1944, p. 2.
- 24 Soviet Russia—Yugoslav Committee of National Liberation. Issued joint communiqué declaring necessity for a united Yugoslav Government. B. I. N., Dec. 9, 1944, p. 1082.
- 24/30 POLAND (in exile). Premier Mikolajczyk resigned and was succeeded by Stanislaw Kwapinski who failed to form a Cabinet. N. Y. Times, Nov. 25, 1944, p. 1. A new Government under premiership of Thomas Arciszewski was announced on Nov. 30. Personnel: N. Y. Times, Dec. 1, 1944, p. 10.
- 29 CZECHOSLOVAKIA (in exile)—FRANCE (Provisional Government). Signed agreement for the exchange of prisoners of war and deportees. N. Y. Times, Nov. 30, 1944, p. 3; London Times, Nov. 30, 1944, p. 3.

December, 1944

- STETTINIUS, EDWARD R. Became Secretary of State. D. S. B., Dec. 3, 1944, p. 653.
- SPAIN—UNITED STATES. Effected agreement, by exchange of notes at Madrid, relating to the operation of international air transport service. Text: D. S. B., Dec. 3, 1944, pp. 674-676.
- 5/20 Great Britain—Greece. Statements on Greece by Prime Minister Churchill on Dec. 5 and by Foreign Secretary Eden on Dec. 20. Text: N. Y. Times, Dec. 6 and 21, 1944, pp. 4, 6.
- 6 WAR CRIMES. Foreign Minister Eden announced in the House of Commons that all neutral countries to which inquiries were sent had given "not unsatisfactory" assurances of their refusal to grant refuge to war criminals. N. Y. Times, Dec. 7, 1944, p. 10.
- 7 Greece. Statement by Secretary of State Stettinius regarding present situation in Greece. Text: Cong. Rec. (daily), Dec. 7, 1944, p. 9122; N. Y. Times, Dec. 8, 1944, p. 13; D. S. B., Dec. 10, 1944, p. 713.
- 10-27 France (Provisional Government)—Soviet Russia. Signed treaty of alliance and mutual assistance at Moscow on Dec. 10. N. Y. Times, Dec. 11, 1944, pp. 1, 10. Text: N. Y. Times, Dec. 18, 1944, p. 8; Russian Embassy. Information Bulletin, Dec. 28, 1944, pp. 1-2; D. S. B., Jan. 7, 1945, pp. 39-40. Summary: London Times, Dec. 18, 1944, p. 3. English and French texts: Free France (N. Y.), Jan. 15,

- 1945, pp. 78–80. French Consultative Assembly approved the pact Dec. 22. p. 80; B. I. N., Jan. 6, 1945, p. 34. Announcement of Dec. 27 stated the Praesidium of the Supreme Soviet had ratified. p. 43.
- 11 CHILE—Soviet Russia. Reëstablished relations, the necessary papers being signed in Washington. London Times, Dec. 12, 1944, p. 4; B. I. N., Dec. 23, 1944, p. 1119.
- BOUNDARIES (Poland). Speech by Prime Minister Churchill backing Russia's demand for a new western frontier, extension of Poland's western frontier at German expense. Text: N. Y. Times, Dec. 16, 1944, p. 6; London Times, Dec. 16, 1944, p. 7. Summary: B. I. N., Dec. 23, 1944, pp. 1124-1127.
- JEWS IN RUMANIA. King Michael signed a decree abolishing restrictions on Jews and laying groundwork for restoration of full citizenship rights. N. Y. Times, Dec. 19, 1944, p. 8.
- DENMARK—UNITED STATES. Effected agreement, by exchange of notes at Washington, granting rights in Denmark and Greenland to United States' airlines, effective provisionally Jan. 1, 1945. N. Y. Times, Dec. 17, 1944, p. 25. Text: Ex. Agr. Ser. No. 430.
- 16 NICARAGUA—SOVIET RUSSIA. Announcement of establishment of diplomatic relations. N. Y. Times, Dec. 17, 1944, p. 7.
- SWEDEN—UNITED STATES. Effected agreement, by exchange of notes at Washington, for commercial air transport services. N. Y. Times, Dec. 17, 1944, p. 25. Text, with annex and notes: D. S. B., Dec. 17, 1944, pp. 757-759; Ex. Agr. Ser. No. 431.
- 17 Finland—Soviet Russia. Signed agreement on terms for delivery of reparations. N. Y. Times, Dec. 21, 1944, p. 11.
- BOUNDARIES (Poland). Text of statement by Secretary of State Stettinius relative to guaranteeing frontiers in Europe, with special application to Poland: N. Y. Times, Dec. 19, 1944, p. 8; D. S. B., Dec. 24, 1944, p. 836; London Times, Dec. 19, 1944, p. 4.
- ETHIOPIA—GREAT BRITAIN. Signed a temporary agreement providing for withdrawal of British military forces, opening of airfields to Allied forces etc. N. Y. Times, Dec. 20, 1944, p. 11; B. I. N., Jan. 6, 1945, p. 32. 5 main provisions: London Times, Dec. 21, 1944, p. 3. Text of treaty, annex to Art. VI and five letters: D. S. B., Feb. 11, 1945, pp. 200-208; Cmd. 6584.
- 21 CHILD—SWITZERLAND. Signed financial agreement. D. S. B., Feb. 25, 1945, pp. 314-315.
- 21/January 4, 1945 PERU—UNITED STATES. Exchanged notes at Washington providing for the second Peruvian-United States cooperative fellowship program. D. S. B., Feb. 18, 1945, p. 218.
- 21/February 6, 1945 Canada—United States. United States ratified Dec. 21 the treaty for the avoidance of double taxation, signed Ottawa, June 8, 1944. D. S. B., Dec. 24, 1944, p. 840. Text of treaty: Cong. Rec. (daily), Dec. 6, 1944, p. 9025-9027. Exchanged ratifications at Washington, Feb. 6, 1945. D. S. B., Feb. 11, 1945, p. 199.
- 23-January 2, 1945 Hungarian National Assembly. Moscow announced a provisional assembly had been elected in liberated area and had started work in Debrecen toward setting up a provisional government which would cooperate with the

- United Nations. B. I. N., Jan. 6, 1945, p. 38; N. Y. Times, Dec. 24, 1944, p. 12. Members of Provisional Government: London Times, Dec. 29, 1944, p. 3; N. Y. Times, Dec. 25, 1944, p. 11. Moscow radio announced Dec. 30 the Soviet-sponsored Provisional Government had asked for the conclusion of an armistice, and had declared war on Germany. N. Y. Times, Dec. 31, 1944, p. 12. Hungarian and Russian envoys, with United States and British representatives began discussions Jan. 2. N. Y. Times, Jan. 3, 1945, p. 4.
- 23/January 15, 1945 Ecuador—United States. Exchanged notes at Quito providing for contributions from both countries to continue health and sanitation program initiated by exchange of notes signed at Washington Feb. 24, 1942. D. S. B., Feb. 25, 1945, p. 314.
- FRANCE (Provisional Government)—Polish Committee of National Liberation. French Government announced it was sending an "observer" to the Polish Committee to handle repatriation of its citizens. N. Y. Times, Dec. 27, 1944, p. 3.
- 26-February 12, 1945 Greece. After the decree of Nov. 7, ordering dissolution of guerrilla ELAS forces, civil strife broke out. On Dec. 26 Prime Minister Churchill and Secretary Eden met in Athens with guerrilla political leaders, known as EAM. N.Y. Times, Dec. 27, 1944, pp. 1, 6. On Dec. 27 political leaders of various parties agreed on establishment of a regency. N. Y. Times, Dec. 28, 1944, pp. 1, 7. Text of peace terms offered by EAM: p. 7. In a Royal Proclamation King George II appointed Archbishop Damaskinos to be Regent. Text of proclamation: N. Y. Times, Dec. 31, 1944, p. 12. The Regent was sworn in Dec. 31. N. Y. Times, Jan. 1, 1945, p. 1; London Times, Jan. 1, 1945, p. 4. Texts of official reports from the British Embassy and Archbishop of Athens: London Times, Dec. 29, 1944, p. 4. Day-to-day summary of developments in Greece: B. I. N., Jan. 6, 1945, pp. 16-24. Civil war ended with signature of a truce on Jan. 11. N. Y. Times, Jan. 12, 1945, p. 1. Text of truce, to become effective Jan. 15: London Times, Jan. 13, 1945, p. 3. The Government and EAM leaders signed a peace agreement on Feb. 12. Text of announcement: N. Y. Times, Feb. 13, 1945, p. 6. Text of agreement: London Times, Feb. 14, 1945, p. 3. Political background, Feb.-Dec. 1944: B. I. N., Jan. 20, 1945, pp. 47-54.
- 28 SWITZERLAND. Federal Council decided to repeal the anti-Communist laws. B. I. N., Jan. 6, 1945, p. 42.
- 29 ITALY—Norway (in exile). Resumption of normal diplomatic relations announced by Italy. N. Y. Times, Dec. 30, 1944, p. 6.
- February 15, 1945 WAR DECLARATIONS. Moscow radio announced Hungarian Provisional Government had declared war on Germany. N. Y. Times, Dec. 31, 1944, p. 12. This action was confirmed in Article I of Armistice agreement of Jan. 20, 1945. Other countries declared war as follows: Paraguay, Feb. 8, on Axis Powers. London Times, Feb. 9, 1945, p. 3. Ecuador, Feb. 2, a "state of belligerency" with Japan. N. Y. Times, Feb. 10, 1945, p. 6. Peru, Feb. 12, on Germany and Japan. N. Y. Times, Feb. 13, 1945, p. 12. Uruguay, Feb. 15, on Germany and Japan. Venezuela, Feb. 15, on the Axis. N. Y. Times, Feb. 16, 1945, p. 11.
- POLISH NATIONAL COUNCIL (Lublin group). 105 members decided to create the Polish Provisional Government, headed by Boleslaw Berut as President, and Edward B. Osubka-Morawski as Prime Minister and Minister of Foreign Affairs. N. Y. Times, Jan. 1, 1945, p. 1; London Times, Jan. 1, 1945, p. 4. Personnel of Provisional Government: B. I. N., Jan. 6, 1945, p. 41.

January, 1945

- FRANCE (Provisional Government)—UNITED STATES. Henri Bonnet presented letters of credence as Ambassador at Washington. D. S. B., Jan. 7, 1945, p. 41.
- POLAND (in exile). The Government issued a statement concerning present conditions in and its peacetime aims for Poland. Text: Polish Review (N. Y.), Jan. 18, 1945, p. 1. Summary: B. I. N., Jan. 6, 1945, p. 41.
- BELGIUM—THE NETHERLANDS (in exile). Signed agreement in London regulating treatment and eventual repatriation of refugees. B. I. N., Jan. 20, 1945, p. 82.
- MEXICO—UNITED STATES. Mexico made final payment in settlement of claims for property damage suffered during the Mexican revolution, in accordance with Art. II of the Convention signed at Mexico City, Apr. 24, 1934. Payment was also made for interest due under Art. III of the same convention. D. S. B., Jan. 7, 1945, p. 43.
- 2 POLAND (Provisional Government). The Lublin Government announced it would not recognize financial obligations incurred by the London Government. B. I. N., Jan. 20, 1945, p. 89.
- POLAND (Provisional Government). The Prime Minister and Defense Minister of the newly constituted government announced the Government's aims. N. Y. Times, Jan. 3, 1945, p. 9.
- 3 France (Provisional Government)—Great Britain. Announcement of signature of agreement to restore regular shipping traffic, with accommodations for certain civilians. London *Times*, Jan. 4, 1945, p. 4; B. I. N., Jan. 20, 1945, p. 83.
- JAPAN—TURKEY. Turkey announced plans to break off diplomatic relations with Japan, effective on Jan. 6. D. S. B., Jan. 7, 1945, p. 20; London Times, Jan. 4, 1945, p. 4; N. Y. Times, Jan. 4, 1945, p. 9.
- 5-February 3 Polish (Provisional Government) Recognition. Russia announced recognition Jan. 5. N. Y. Times, Jan. 6, 1945, p. 1; B. I. N., Jan. 20, 1945, p. 92. Polish Government in London in a statement of Jan. 8 said recognition by Russia constituted a violation of the right of the Polish nation to possess an independent state, free from foreign intervention. London Times, Jan. 9, 1945, p. 4. Czechoslovak Government in exile recognized the Lublin régime with the breaking of diplomatic relations with the Government in London. N. Y. Times, Feb. 1, 1945, p. 4. Bulgaria granted recognition Feb. 3. N. Y. Times, Feb. 5, 1945, p. 4.
- 6/10 Pan American Union—Argentina. Secretary of State Stettinius' note of Jan. 6 to the Governing Board of the Pan American Union stated his Government's opinion that no action should be taken now on Argentina's prior request that a meeting of American Foreign Ministers be called to consider existing situation between Argentina and other American Republics. Text: D. S. B., Jan. 21, 1945, p. 91. Argentina announced Jan. 10 it would not participate in future meetings of the Union. N. Y. Times, Jan. 11, 1945, p. 1. Text of announcement: p. 8.
- 8 INTER-AMERICAN ACADEMY OF COMPARATIVE AND INTERNATIONAL Law. Opened week-long session at Havana. The Academy was created by the Inter-American Bar Association. N. Y. Times, Jan. 9, 1945, p. 17.
- 10 France (Provisional Government)—Germany. French Government announced that "measures of *de facto* annexation taken unilaterally in Alsace and Lorraine by the Reich Government are without validity in the eyes of France." B. I. N., Jan. 20, 1945, p. 84.

- EGYPT—Great Britain. Announcement of a new financial agreement. N. Y. Times, Jan. 12, 1945, p. 9; B. I. N., Jan. 20, 1945, p. 86. Text: Cmd. 6582.
- DARDANELLES. Announcement made in London that Turkey is permitting war supplies to be shipped through the Straits to Russia. N. Y. Times, Jan. 13, 1945, p. 2.
- 15/31 United Nations Commission for the Investigation of War Crimes. Viscount Finlay was appointed United Kingdom representative on Jan. 15. N. Y. Times, Jan. 16, 1945, p. 9. On Jan. 31 Lord Wright, the representative of Australia, was elected Chairman, and continuance of efforts to bring criminals to justice was promised. N. Y. Times, Feb. 1, 1945, p. 4; London Times, Feb. 1, 1945, p. 4.
- UNCONDITIONAL SURRENDER. Prime Minister Churchill, in speech in the House of Commons, proclaimed solidarity of British, Russian, and United States' demands for unconditional surrender. Text: N. Y. Times, Jan. 19, 1945, pp. 12-13; London Times, Jan. 19, 1945, pp. 5-7.

February

- 3-18 Poland (Provisional Government). Lublin radio reported the Government had taken over administration in liberated Warsaw. N. Y. Times, Jan. 19, 1945, p. 4;
 London Times, Jan. 19, 1945, p. 4. Manifesto issued by the Provisional Government and the National Council of the Homeland, called on liberated areas to support the Lublin leaders. Excerpts from manifesto: N. Y. Times, Jan. 22, 1945, p.
 Moscow radio announced Feb. 3 the Provisional Government had been established at Warsaw. N. Y. Times, Feb. 4, 1945, p. 21.
- ARMISTICE (Hungarian). The Hungarian Provisional Government signed an armistice at Moscow. N.Y. Times, Jan. 21, 1945, pp. 1, 14. By its provisions Hungary will pay reparations of 300 million dollars in commodities. Text: N.Y. Times, Jan. 22, 1945, p. 4; D. S. B., Jan. 21, 1945, pp. 83-86; see below, Supplement, pp. 97-103. Summary: B. I. N., Feb. 3, 1945, pp. 114-115.
- JAPAN—UNITED STATES. Announcement of receipt of communication from Japanese Government giving notification of its consideration of further exchange of nationals between Japan and the United States. Text: D. S. B., Jan. 28, 1945, p. 132; N. Y. Times, Jan. 23, 1945, p. 8.
- POLAND (in exile). In a memorandum to the British and United States Governments the Polish Premier suggested that an Inter-Allied commission temporarily administer Polish territory pending a free election. N. Y. Times, Jan. 24, 1945, p. 4; London Times, Jan. 24, 1945, p. 3. Text: Polish Review (N. Y.), March 1, 1945, p. 2.
- 22/29 Yugoslavia (in exile). King Peter requested the resignation of Premier Subasitch on Jan. 22, and on the 29th accepted the resignation of the Cabinet and reappointed it. He consented to the proposal to delegate his powers to a Regency Council, pending a popular decision as to his return. N. Y. Times, Jan. 23, 1945, p. 1; Jan. 30, pp. 1, 4; London Times, Jan. 23, 1945, p. 4. Text of Regency Declaration: London Times, Jan. 30, 1945, p. 4.
- ¹ 22/February 2 Archeishop of Canterbury. Dr. Geoffrey Francis Fisher, Bishop of London, was elected on Jan. 22, and the election was confirmed Feb. 2. N. Y. Times, Jan. 23, 1945, p. 5; London Times, Feb. 3, 1945, p. 2.
 - 24 YUGOSLAV FLAG. Yugoslav ships to display in future the red-starred flag of Marshal Tito, in place of the blue, white, and red tricolor of the Royal Yugoslav Government. N. Y. Times, Jan. 25, 1945, p. 4.

- 25-26 CANADA—UNITED STATES. Representatives met in New York to discuss matters arising out of the International Civil Aviation Conference at Chicago. D. S. B., Jan. 21, 1945, p. 110. Text of announcement issued at close of meeting. D. S. B., Feb. 4, 1945, p. 160.
- 25-31 International Labor Office. 94th session of the Governing Body opened Jan. 25 in London. N. Y. Times, Jan. 26, 1945, p. 4. Declaration, adopted Jan. 26, supported Dumbarton Oaks Proposals. N. Y. Times, Jan. 27, 1945, p. 3. At closing session Italy's readmission was delayed and placed on agenda for session at Quebec next year. N. Y. Times, Feb. 1, 1945, p. 8.
- 27 ICELAND—UNITED STATES. Signed reciprocal air transport agreement at Reykjavik. N. Y. Times, Jan. 31, 1945, p. 8. Text: D. S. B., Feb. 4, 1945, pp. 170-172.
- 30 FRANCE (Provisional Government)—ITALY. France appointed two consuls at Palermo and Bari. N. Y. Times, Jan. 31, 1945, p. 9.

February, 1945

- Belgium—United States. United States restored closed letter service in liberated areas of Belgium. N. Y. Times, Feb. 2, 1945, p. 2.
- CZECHOSLOVAKIA (in exile)—POLAND (in exile). Polish Government in London broke off diplomatic relations with Czechoslovakia. N. Y. Times, Feb. 2, 1945, p. 3; London Times, Feb. 2, 1945, p. 3. Text of Polish announcement: Polish Review (N. Y.), Feb. 15, 1945, p. 2.
- FINLAND—UNITED STATES. Announcement that United States had permitted Finland to pay the Dec. 15, 1944, installment on its debt. N. Y. Times, Feb. 2, 1945, p. 1.
- ITALY—UNITED STATES. United States announced steps to permit subsistence remittances to be sent to recently freed Italian provinces. N. Y. Times, Feb. 2, 1945, p. 2.
- WAR CRIMES. Statement issued by Acting Secretary of State Grew. Text: N. Y. Times, Feb. 2, 1945, p. 6; D. S. B., Feb. 4, 1945, pp. 154-155.
- 3 IRELAND—UNITED STATES. Effected agreement, by exchange of notes at Washington, regarding international air transport. Text of agreement and annex: D. S. B., Feb. 4, 1945, pp. 172–174.
- SOVIET RUSSIA. Alexei, former Metropolitan of Novgorod, was crowned Patriarch of Moscow and All the Russias. N. Y. Times, Feb. 5, 1945, p. 4; London Times, Feb. 3, 1945, p. 3.
- 4-13 CRIMEA CONFERENCE. Prime Minister Churchill, President Roosevelt, and Marshal Stalin opened conference Feb. 4 at Yalta. At close of meeting a communique was issued. Text: 79th Cong., 1st sess. Senate. Doc. 8; N. Y. Times, Feb. 13, 1945, p. 4; London Times, Feb. 14, 1945, p. 4; Russian Embassy. Information Bulletin, Feb. 23, 1945, pp. 6-8; D. S. B., Feb. 18, 1945, pp. 213-216. On Feb. 13 the Polish Government in London issued a statement declaring its refusal to accept decisions made at the Conference. On Feb. 13 announcement was made of Premier Arciszewski's appeal to President Roosevelt and Prime Minister Churchill. Texts: N. Y. Times, Feb. 14, 1945, p. 12.
- 5 France (Provisional Government). Gen. de Gaulle stated three major peace demands and declared France would not be bound by any Inter-Allied decisions unless it had had a part in framing them. Text: N. Y. Times, Feb. 6, 1945, p. 10.
- 5 France (Provisional Government)—Lebanon—Syria. Lebanese Minister in London, speaking for Syria as well as his own country, stated the two countries were un-

willing to grant to France any special privileges or make any treaties with France which would compromise their status with other Arab states. *N. Y. Times*, Feb. 6, 1945, p. 12.

- 6-17 Trade Union Congress. World Trade Union Congress opened Feb. 6 in London. London Times, Feb. 7, 1945, p. 8. Agenda: London Times, Dec. 8, 1944, p. 2. Text of Sir Walter Citrine's proposals for postwar treatment of Germany: N. Y. Times, Feb. 10, 1945, p. 4; London Times, Feb. 10, 1945, p. 2. Adopted Feb. 15 a report calling on the United Nations to reconsider their economic and other relations with Spain, Argentina, and all other Fascist countries. A curb on Swedish and Swiss trade with Germany was also asked. N. Y. Times, Feb. 16, 1945, p. 12. On Feb. 16 it adopted a comprehensive report on treatment of Germany, punishment of war criminals, etc. N. Y. Times, Feb. 17, 1945, p. 7. Brief summary: London Times, Feb. 17, 1945, p. 2. Voted to establish a committee of 41 members to form a new world group having a secretariat with headquarters in Paris. N. Y. Times, Feb. 18, 1945, p. 11.
- 9 POLAND (in exile). Statement issued in London cited help rendered to the Allies and demanded respect for its rights. Excerpts: N. Y. Times, Feb. 10, 1945, p. 4.
- WAR CRIMES. Summary of neutral countries' attitudes on the question of refuge for war criminals: N. Y. Times, Feb. 10, 1945, p. 3; D. S. B., Feb. 11, 1945, pp. 190-191.
- 11 Great Britain—Soviet Russia. Signed agreement at the Crimea Conference for the care and rehabilitation of liberated prisoners and internees. London *Times*, Feb. 13, 1945, p. 4.
- 11 Soviet Russia—United States. Signed agreement, identical with Anglo-Russian agreement of the same date, for the care and rehabilitation of liberated prisoners and internees. London *Times*, Feb. 13, 1945, p. 4.
- 12 Germany. Conscription of women from 16 to 60 years for the Volkssturm was ordered. N. Y. Times, Feb. 13, 1945, p. 9.
- 14 Arab Nations. Foreign Ministers of Egypt, Saudi Arabia, Iraq, Transjordan, and Syria met in Cairo to draft a constitution for an Arab league. N. Y. Times, Feb. 15, 1945, p. 4; London Times, Feb. 15, 1945, p. 4.

MULTIPARTITE CONVENTIONS

AIR SERVICES TRANSIT AGREEMENT. Chicago, Dec. 7, 1944.

Acceptance:

The Netherlands. Jan. 11, 1945. D. S. B., Jan. 21, 1945, p. 108.

Norway. Jan. 30, 1945.

United States. Feb. 8, 1945. N. Y. Times, Feb. 10, 1945, p. 24; D. S. B., Feb. 11, 1945, p. 198.

Adherence:

Newfoundland. London Times, Jan. 17, 1945, p. 3; D. S. B., Feb. 18, 1945, p. 224.

Signature:

Canada. Feb. 10, 1945. N. Y. Times, Feb. 11, 1945, p. 10; D. S. B., Feb. 11, 1945, p. 198.

Guatemala. Jan. 30, 1945.

Norway. Jan. 30, 1945. D. S. B., Feb. 4, 1945, p. 169.

List of signatures to and including Jan. 12, 1945: D. S. B., Jan. 14, 1945, p. 67.

Text: Cong. Rec. (daily), Dec. 19, 1944, pp. A5246-5247.

AIR TRANSPORT AGREEMENT. Chicago, Dec. 7, 1944.

Acceptance:

The Netherlands (with reservation), Jan. 11, 1945. D. S. B., Jan. 21, 1945, p. 108.

United States. Feb. 9, 1945. N. Y. Times, Feb. 10, 1945, p. 24; D. S. B., Feb. 11, 1945, p. 198.

Adherence:

Newfoundland. London Times, Jan. 17, 1945, p. 3.

Signature:

Guatemala. Jan. 30, 1945. D. S. B., Feb. 4, 1945, p. 169.

List of signatures to and including Jan. 12, 1945: D. S. B., Jan. 14, 1945, p. 67.

Text: Cong. Rec. (daily), Dec. 19, 1944, pp. A5247-5248.

AVIATION. Interim Agreement. Chicago, Dec. 7, 1944.

Acceptance:

Canada. D. S. B., Jan. 14, 1945, p. 67; N. Y. Times, Jan. 19, 1945, p. 10.

The Netherlands. Jan. 11, 1945. D. S. B., Jan. 21, 1945, p. 108.

United States. Feb. 9, 1945. D. S. B., Feb. 11, 1945, p. 198; N. Y. Times, Feb. 10, 1945, p. 24.

Signatures:

Guatemala. Jan. 30, 1945.

Norway. Jan. 30, 1945. D. S. B., Feb. 4, 1945, p. 169.

List of signatures to and including Jan. 12, 1945: D. S. B., Jan. 14, 1945, p. 67.

Text: Cong. Rec. (daily), Dec. 19, 1944, pp. A5238-5241.

AVIATION CONFERENCE. Final Act. Chicago, Dec. 7, 1944.

Signatures: 52 countries.

Text: Cong. Rec. (daily), Dec. 19, 1944, pp. A5234-5238.

List of signatures to and including Jan. 12, 1945: D. S. B., Jan. 14, 1945, p. 67.

AVIATION CONVENTION. Chicago, Dec. 7, 1944.

Signatures:

Guatemala. Jan. 30, 1945.

Norway. Jan. 30, 1945. D. S. B., Feb. 4, 1945, p. 169.

List of signatures to and including Jan. 12, 1945: D. S. B., Jan. 14, 1945, p. 67.

Text: Cong. Rec. (daily), Dec. 19, 1944, pp. A5241-5246.

INTER-AMERICAN AUTOMOTIVE TRAFFIC. Washington, Dec. 15, 1943.

Ratification:

Brazil. Nov. 7, 1944.

Ratification deposited:

Brazil. Jan. 8, 1945. D. S. B., Jan. 21, 1945, p. 108.

Inter-American Institute of Agricultural Sciences. Washington, Jan. 15, 1944. Ratification:

Dominican Republic. Dec. 21, 1944.

Ratification deposited:

Dominican Republic. Jan. 10, 1945. D. S. B., Jan. 21, 1945, p. 108.

Inter-American Radio Communications Arrangement. Revision, Santiago, Chile, Jan. 26, 1940.

Ratification deposited:

Venezuela. Dec. 1, 1944. D. S. B., Jan. 28, 1945, p. 147.

INTER-AMERICAN UNIVERSITY. Panama, Oct. 4, 1943.

Ratification:

Venezuela. Nov. 6, 1944.

Ratification deposited:

Venezuela. Jan. 17, 1945. D. S. B., Feb. 4, 1945, p. 175.

Refugees Status. Geneva, Oct. 28, 1933.

Denunciation canceled:

France (Provisional Government). Nov. 8, 1944. D. S. B., Jan. 21, 1945, p. 110. SANITARY CONVENTION. Paris, June 21, 1926. Amendment, Washington, Jan. 5, 1945.

Signatures:

France, Poland, Great Britain and Northern Ireland, United States (with reservation), D. S. B., Jan. 7, 1945, p. 10.

China. Jan. 11, 1945.

South Africa. Jan. 13, 1945.

Egypt, Canada, Cuba, Dominican Republic, Ecuador, Nicaragua, Peru, Luxembourg, Greece, Honduras, Haiti, Czechoslovak Republic. Jan. 15, 1945.

Came into force Jan. 15, 1945, except for United States, Egypt, Canada, Cuba, Dominican Republic and Peru, which signed subject to ratification. D. S. B., Jan. 21, 1945, p. 109. Open to accession after Jan. 15, 1945 by any non-signatory country.

Sanitaby Convention for Air Navigation. The Hague, April 12, 1933. Amendment, Washington, Jan. 5, 1945.

Signatures:

France, Poland, Great Britain and Northern Ireland, United States (with reservation). D. S. B., Jan. 7, 1945, p. 10.

China. Jan. 11, 1945.

South Africa. Jan. 13, 1945.

Egypt, Canada, Cuba, Dominican Republic, Nicaragua, Peru, Luxembourg, Ecuador, Greece, Honduras, Haiti, Bolivia. Jan. 15, 1945.

Came into force Jan. 15, 1945, except for United States, Egypt, Canada, Cuba, Dominican Republic and Peru, which signed subject to ratification. D. S. B., Jan. 21, 1945, p. 109. Open for accession after Jan. 15, 1945 by any non-signatory country.

SOUTH AMBRICAN RADIO COMMUNICATIONS AGREEMENT. Santiago, Chile, Jan. 16, 1940. Ratification deposited:

Venezuela. Dec. 1, 1944. D. S. B., Jan. 28, 1945, p. 147.

SUGAR PRODUCTION & MARKETING. Protocol. London, Aug. 31, 1944.

Text: Cong. Rec. (daily), Dec. 6, 1944, pp. 9030-9031.

TRADE MARK AND COMMERCIAL CONVENTION & PROTOCOL. Washington, Feb. 20, 1929.

Denunciation of the Protocol:

Haiti. Nov. 27, 1944. D. S. B., Jan. 21, 1945, p. 107.

U.N.R.R.A. Washington, Nov. 9, 1943.

Ratifications:

Guatemala: June 7, 1944. D. S. B., July 30, 1944, p. 129.

India (effective April 24, 1944).

Venezuela. Aug. 28, 1944.

Ratification deposited:

Venezuela. Nov. 17, 1944. D. S. B., Dec. 10, 1944, p. 733.

United Nations Declaration. Washington, Jan. 1, 1942.

Signatures:

France. Jan. 1, 1945. D. S. B., Jan. 7, 1945, p. 19; N. Y. Times, Jan. 2, 1945, pp. 1, 8. Chile, Peru, Paraguay and Ecuador. Feb. 14, 1945. D. S. B., Feb. 18, 1945, pp. 235-237; N. Y. Times, Feb. 15, 1945, p. 6.

DOROTHY R. DART

JUDICIAL DECISIONS

GEORGES TRIANDAFILOU v. MINISTERE PUBLIC

MIXED COURTS IN EGYPT, COURT OF CASSATION *

[June 29, 1942]

Members of crew of foreign war vessels are immune to local jurisdiction when on shore on duty.

The Court, Mr. C. VAN ACKERE, presiding:

Í

Whereas Mr. Georges Triandafilou has appealed to this Court, within the delay required by the law, against the judgment of the Tribunal Correctional of Alexandria of May 4, 1942, which condemned him to 8 months in prison for having struck with a dagger a local police agent who was engaged in the performance of his duties;

Whereas the first ground of the appeal is drawn from the incompetence of the mixed courts, the author of the appeal, a Greek subject, being a sailor on the torpedo boat destroyer "Panther" of the Greek fleet anchored in the port of Alexandria:

Whereas it is pertinent, as concerns the immunity from jurisdiction of warships in a foreign port, to distinguish between the immunity which the vessel itself enjoys, as representing the country whose flag it flies, and the personal immunity which the crew would enjoy, "by way of an extension," which would result in withdrawing the crew to a greater or less degree from the territorial jurisdiction even when they had gone on land (Gidel, *Droit international public de la mer*, Vol. II, page 267; Fauchille, *Traité de droit international public*, Vol. I, Part 2, No. 619⁵);

Whereas the immunity from jurisdiction of the vessel itself is not at issue in the present appeal, the offense for which Triandafilou was condemned having been committed on land, and being, moreover, an offense against the common law; whereas the opinions of the writers are divided as concerns the extent of the immunity from jurisdiction of the members of the crew who have left their vessels, and whereas the Institute of International Law, meeting in Stockholm in 1928, summarized international practice and the doctrinal teachings on the subject in the following resolutions:

Article 20. If personnel of the vessel while on shore commit offenses against the local laws they may be arrested by the agents of the territorial authority and handed over to the local courts. Notice of the arrest is to be given to the commander of the vessel who may not demand that the persons arrested be delivered over to him.

If the offenders, not having been arrested, have returned on board the territorial authority may not arrest them there but only demand that

* The decisions which follow were discussed by Judge Jasper Y. Brinton in this JOURNAL, Vol. 38 (1944), at p. 379. Translations from manuscripts kindly provided by Judge Brinton.

they be delivered over to the courts competent according to the law of the flag state and that it, the local state, be kept informed of the result of the proceedings.

If personnel of the vessel while on shore on duty, whether individually or collectively, are charged with offenses committed on shore the territorial authority may proceed to their arrest but must deliver them over to the commander of the vessel upon demand.

The territorial authority may, when delivering over offenders, remit also a minute setting forth the facts; it has the right to demand that they shall be proceeded against before the competent authorities and that it shall be kept informed of the results of the prosecution.

Whereas these resolutions, which, moreover, merely reproduce those adopted at The Hague in 1898, can be considered as stating the latest holding of international law on this subject; and whereas they are applicable not only when the warship is in port in passage elsewhere but also when it is remaining there; whereas they should be applicable also in the very special circumstances of the instant case where the Greek forces are participating in war-like operations in common with the British forces which have assumed the defense of Egypt without, furthermore, this latter country itself being in a state of declared war; whereas in such a case there does not exist in fact any usage of international law which legally limits the sovereignty of the country where the ship is found;

Whereas it would be permissible to ask whether Egypt, whose defense has been assumed at the present time by the British forces, and which concluded with Great Britain, on August 26, 1936, a treaty agreeing to the terms by which the immunity from jurisdiction of the soldiers and sailors of the latter was considerably extended, has not, in the absence of formal agreements such as are customary in such a matter, agreed tacitly, by receiving on its territory the Greek forces allied to the British forces, to accord to them the benefit of the clauses of the treaty of 1936 or similar advantages; but whereas it results from an official information included in the documents of this case that such assimilation has not been accepted by the Egyptian government; and whereas it could not be contested that Egypt, which has graciously opened its territory to the Greek forces, has the right to determine the conditions under which the provisional sojourn of these forces must be reconciled with respect for its sovéreignty;

Whereas the sole question which presents itself, from the point of view of sustaining the appeal, is that of knowing whether Triandafilou was or was not carrying out a mission under instructions at the moment when he committed the aggression for which he has been convicted;

Whereas the judgment from which appeal has been taken held that if Triandafilou came on shore to discharge a duty (purchase of food for the needs of the ship) and only with permission to return on board by midnight, he was no longer on duty when, coming out of a bar on the Place Mohamed Aly in a state of intoxication some minutes before midnight, he struck with a

knife an agent of the local police who, with the purpose of calming a disturbance which had just broken out among other persons, was setting about to conduct these other persons to the police station;

Whereas the question of determining the juridical extent of a principle of international law is a legal question which pertains to the authority of the Court of Cassation:

Whereas if the members of the crew of a warship enjoy the immunity from jurisdiction of the vessel itself when they are on shore this is only true in so far as they can be considered as agents for executing orders which are given them in the interests of the vessel; whereas it is in short the immunity of the vessel which projects itself beyond the vessel for the realization of its own ends; whereas such is the basis of the principle which withdraws them from the local jurisdiction when they are on duty; whereas it follows that these words should be interpreted not with reference to the activities of him who has received the order but with reference to him who has given the order and who must take cognizance of its execution; and whereas in the instant case the sailor Triandafilou did not return on board to give an account of his commission, and whereas he was therefore still on duty when he committed the aggression with which he was charged; whereas it results from these considerations that the first ground for the appeal is well founded and that there is no room for examining the other grounds;

For these reasons,

Reversing the decision of the lower court.

Receives the appeal as made within the delay permitted; declares it well-founded; quashes, in consequence, without referring it back to the lower court, the judgment which has been appealed; and orders the sailor Triandafilou to be set at liberty immediately; costs to be paid by the Treasury.

Alexandria, June 29, 1942. R. Mercinier Registrar C. VAN ACKERE

President

PANOS STAMATOPOULOS v. MINISTERE PUBLIC

MIXED COURTS IN EGYPT, COURT OF CASSATION

[November 23, 1942]

Jurisdiction of Mixed Courts in Egypt in matter of embezzlement not divested by incorporation of Greek subject in forces enjoying limited immunity from local jurisdiction.

The Court, Mr. C. van Ackere, presiding:

Whereas Mr. Panos Stamatopoulos was prosecuted on the charge of having continuously, from 1934 down to November 3, 1938, misappropriated funds which he managed as a mandatory or business agent of Mr. Nicolas Papageorgiou, who had become insane; whereas, having been in-

corporated in the Greek air forces, united with other Allied forces in Egyptian territory, in October, 1941, the case then being in its preliminary stages before the Correctional Court in Cairo, he maintained that the jurisdiction of the Mixed Courts had been divested in favor of the military jurisdiction; whereas, the Court in Cairo having declared itself competent by decision of April 20, 1942, he appealed to this Court against the said judgment within the time prescribed by the law;

Whereas the appeal reveals that the sojourn of the Greek forces in the territory took place with the consent of the Egyptian Government, that the immunity from jurisdiction of (foreign) military forces as regards the local authorities is recognized by international custom in the case of occupation or a sojourn consented to by the sovereign as well as in the case of forced occupation, and whereas this immunity should extend, out of the respect due to the foreign sovereignty, to all members of the military forces beginning with the date of their induction;

Whereas the Ministère Public has raised a preliminary exception based on the facts that the offense dates back to the year 1934, that it had led to a preliminary hearing before the Mixed Tribunal, and that it was only in the year 1941 in the course of proceedings before judges who were dealing with the merits of the case that the appellant was incorporated in the Greek aviation, contending that it follows that, whatever be the purport of the international custom the exception of immunity from jurisdiction could not be raised;

Whereas the rules of judicial competence are a matter of public order and are applicable to proceedings already under way when there had not yet occurred a judgment on the merits (Dalloz, *Pratique*, V bis, *Lois et arretes*, No. 235, etc.) (Correctional Tribunal in Cairo, April 15, 1940, R. G. 419/63 A. J.); whereas the court could not therefore honor this preliminary exception;

Whereas it results from the documents submitted that the Egyptian Government refused to grant to the Greek forces the benefit of immunity from jurisdiction whether in civil or penal matters, with the sole option of applying their military code "within the limits of the Greek army";

Whereas the appellant objects that these conditions should have been agreed upon in advance to have this effect for if the consent to the sojourn of the troops is given without reservation it involves as of right, in virtue of international custom, complete immunity from jurisdiction (Case of *The Exchange*, reported by Gidel *Droit International de la Mer, T. II*, p. 267);

Whereas the Court does not even have to decide at what moment the restrictive conditions indicated above were laid down by the Egyptian Government, but it goes without saying that, assuming that these conditions had not been laid down and accepted before the arrival of the Greek troops in the territory where their recruitment took place, they could still have been accepted after the fact, even tacitly, by the absence of any objection;

now if at a given moment the Greek Legation solicited from the Egyptian Government civil immunity for the members of its armies—a thing which moreover had been refused to it without a diplomatic controversy having arisen in the wake of such a refusal—it is not known to the Court that it would have claimed at any time a penal immunity extending beyond that described above; whereas the appellant does not even allege, and neither in the instant case nor in other similar cases have the Greek authorities put forward the pretension of prosecuting and judging delinquents brought before the Mixed Courts; whereas in these conditions the Court finds itself bound by the provisions of the Mixed Penal Code and by the official notice given by the Egyptian Government on the subject of the character clothing the sojourn of the Greek troops in the territory (Court of Cassation, May 30, 1938, Case of Alexander Spender v. Ministère Public; also June 6, 1938—Bulletin 50, p. 349);

For these reasons, reversing the decision of the lower court, admits the appeal in point of the fact within the term allowed by law, but rejects it on the merits, condemns its author to pay the costs, and orders the confiscation of the deposit of £5.

R. MERCINIER

CONSTANT VAN ACKERE

President

Registra**r**

MALERO MANUEL v. MINISTERE PUBLIC

MIXED COURTS IN EGYPT, COURT OF CASSATION

[March 8, 1943]

Spanish member of French Foreign Legion who had been convicted for attempted manslaughter while on shore in Egypt outside of premises occupied by his unit held subject to jurisdiction of Mixed Courts, he not having been on duty at time of the offense.

The Court, Mr. C. van Ackere, presiding:

Whereas Mr. Malero Manuel, a Spanish subject, a member of the French Foreign Legion, was remanded before the Court of Assizes for having, on September 1, 1943, attempted to kill one Marco Tahan by firing three revolver shots at him; whereas he raised the question of the incompetence or at least the lack of exercise of competence of the jurisdiction of the Mixed Courts and whereas, the Court of Assizes having declared itself competent, he has appealed within the legal period;

Whereas the appeal is based on the pretended existence of an international custom, according to which a soldier who is a member of a body of troops present in a foreign country with the consent of the sovereign of that country is subject to the jurisdiction of the military courts of his own country to the exclusion of the local territorial jurisdiction even in a case, such as the present one, of a violation of common law committed outside of the military premises and without the soldier being on duty at the time;

Whereas it does not appear from the record of the proceedings that an official notice had been given by the Egyptian Government concerning the conditions under which the Free French forces were present in the country; whereas the present case thus differs from that of the Greek forces dealt with in the decisions of June 9, 1942, November 23, 1942, and February 8, 1943, in that it must be solved in the light of the generally admitted principles of international penal law;

Whereas it is impossible to meet the appeal with a refusal to receive it based on Article 46 of the Egyptian Constitution according to which every international convention must, to be applicable, be covered by domestic legislation; and whereas, according to the terms of Article 2 of the Convention of Montreux, foreigners are not subject to Egyptian penal law except under reservation of the principles of international law; and whereas on the one hand the Convention of Montreux was the object of Law No. 48 of July 24, 1937, and whereas, on the other hand, the principles which the appellant invokes did not result, according to the appeal, from conventions but from international customary law whose obligation is not dependent upon the conclusion of formal conventions; and whereas it is, moreover, in this sense that this Court has decided in the cases mentioned above, confirming for the sailor and the soldier the principle of immunity from jurisdiction while on duty;

Whereas before entering upon an examination of this appeal it is proper to make clear that if the Allied forces are in the country for the purpose of defending the territory under the British High Command, and to engage, consequently, in warlike operations, the position of Egypt cannot be assimilated in any way to that of a territory occupied by force; in the latter case the occupant imposes his own law, while in the case of a permitted sojourn—which is the present case—immunity from jurisdiction can only result from tacit renunciation of the exercise of the local sovereignty; the question is that of knowing what is, according to international custom, the extent of this tacit renunciation;

Whereas the principle of the immunity from jurisdiction for armed forces located in a foreign country is no longer contested as concerns service offenses, disciplinary offenses, military offenses, violation of the common law committed within the military premises, and perhaps even those committed outside against the security of the army (Journal de Droit International Privé, 1882, p. 511; Faucille, Traité de Droit International Public, T. I. lère Partie, No. 266, note); there do not exist, in short, any serious divergences in the literature except as concerns violations of common law disturbing the public peace and security committed by a soldier outside of the military premises, either against an inhabitant or against other soldiers, on condition, moreover, that the offender is not on duty, for, in the latter case, he is considered as an integral part of the armed forces to which he belongs (decisions of June 29, 1942, and February 8, 1943, cited above);

Whereas American doctrine has remained faithful to the decision handed down in 1812 in the case of *The Exchange*, according to which the consent given by a sovereign to the occupation, the sojourn, or the passage of foreign forces implies, out of respect for the foreign sovereign, a complete renunciation of the exercise of territorial jurisdiction (article by Archibald King in the *American Journal of International Law* of October 4, 1942); it is, moreover, incontestable that, at least as concerns penal matters, numerous authors have adhered to this doctrine;

Whereas, however, by another doctrine the same extension is not given to tacit renunciation of violations of common law committed outside of the military premises, for then the local sovereignty is manifestly more deeply involved than the foreign sovereignty; this doctrine is taught in England by Lawrence and Oppenheim, whose opinion has already been cited by this Court in its decision of February 8, 1943; it is along the line of this doctrine that the practice of the British Government has developed; the law of 1940 concerning Allied forces sojourning in Great Britain accords to them immunity from jurisdiction for questions of discipline and administration alone, that is to say under the same conditions within which the Dominions had obtained such immunity by the "Visiting Forces Act" of 1933; it was only in May, 1942, that the United States succeeded in obtaining, by special convention, the immunity from jurisdiction for common law offenses which they had vainly sought during the war of 1914-1918; the practice of the Australian government was in all points in conformity with that of the British: limitation of the immunity at the beginning of the war and an extension of an immunity in favor of the United States by a special Convention in May, 1942; these conventions were inspired by special circumstances and do not imply, as the appellant alleges, the recognition of the existence of an obligatory principle of customary international law; the practice of the Egyptian Government has not been different, as the official notice given concerning the conditions of sojourn of the Greek forces in the territory proves, as likewise Military Proclamation No. 375 of March 2, 1943, which grants penal immunity to the military forces of the United States without retroactivity and for a period which will terminate automatically at the end of the war; this proclamation, like the Anglo-Egyptian Convention of August, 1936, creates, moreover, new and exceptional rights freely accorded by the Egyptian Government;

Whereas the states of Latin-America have also declared in favor of a restricted immunity: the so-called Bustamante Code, which was the object of resolutions adopted on February 20, 1928, at the time of the Sixth Conference on International Law of the American States, is phrased as follows in Article 299, which follows an article relating to the immunity of diplomatic agents: "nor are the penal laws of the State applicable to offenses committed within the field of military operations when it authorizes the passage of an army of another contracting state through its territory, except

offenses not legally connected with said army" (Hudson, M. O., International Legislation, Vol. IV, p. 2323);

. Whereas French theory in the matter is divided (Faucille, cited above: Travers, Droit Penal International, T. II, No. 879); as for the Court of Cassation in France it draws a distinction between simple sojourn or passage of troops and occupation of territory properly speaking, the latter supposing a military authority operating outside of the boundaries of the military premises assigned to the troops; by decision of February 29, 1868, handed down in the case of the English corvette Pearl (S. 1868, 1. 351), that court pronounced in favor of the local jurisdiction in the case of a violation of common law committed by an English sailor who had gone on shore (without being on duty), while it rendered a series of decisions in the case of occupation, the first of which came on January 19, 1865 (S. 65, 1. 53), and dates back to the occupation of Rome by French forces and which extended the competence of French military authority to infractions of the common law committed by soldiers and even by local inhabitants, taking account in each case, on the one hand, of the correlative rights and duties of the occupying power and, on the other hand, of the degree of organization of the administrative machinery of the occupied state (note of Professor Roux to a decision of October 23, 1926: S. 1928, 1. 113); the appellant is entirely wrong in invoking these decisions in support of his appeal for they all suppose the right of safeguarding the public interest of the two states by the occupying army independently of military activity properly speaking; thus it is notable that the decision of January 19, 1865, more particularly invoked by the appellant, is justified by the fact that the French armies occupied the city of Rome in order there to watch over, in the public interest, the faithful execution of the treaty which had been concluded; now the Allied troops found in Egypt are not in occupation of the territory; their activity is limited to purely military activity within the confines of the premises which have been assigned to them and in the centers of military operations properly speaking, without any public or administrative control over the whole or any part of the territory; on the other hand, the danger of invasion of Egypt has not caused any disturbance to the regular functioning of the administrative machinery of the country and especially to the normal functioning of the Mixed Courts, international in composition, and called upon to decide cases. involving foreigners; in conditions so special in character a tacit renunciation of sovereignty cannot reasonably be presumed;

Whereas this distinction between occupation and simple stationing of troops appears very clearly in the Anglo-Egyptian treaty of August 26, 1936, the first article of the treaty declaring that the occupation of Egypt has terminated and Article 8 providing that thenceforth British forces would be stationed in definite zones and a special convention of the same date, dealing with the privileges and immunities of the army, being necessary to extend such privileges and immunities outside of the limits of the military premises;

Whereas it was considerations of this nature which dictated the arbitral award handed down on the occasion of the Casablanca incident; this incident arose from the fact that French military authorities had arrested German deserters from the Foreign Legion in spite of the forcible opposition of the German Consul who based his intervention on the right which his country possessed to protect its nationals in virtue of the regime of capitulations to which the State of Morocco was subjected; the jurisconsult Weiss, who defended the thesis of the predominance of French sovereignty over that of Moroccan sovereignty, which had been mutilated by the capitulations, based his contention principally upon the circumstances that the arrest had taken place within the range of the actual authority of the French military authority; as for the arbitrators, they decided that cases of conflicts of the type submitted to them could not be decided in an absolute manner on one side or the other and that it was necessary in each case to take account of circumstances; they gave preference to the French thesis for the reason that the deserters had not yet left the territory of the city of Casablanca which was placed "under the immediate, continuing, and effective domination" of the French forces stationed in the city and constituting its garrison; the very precise terms employed by the arbitrators permit the supposition that the dispute would have been decided in favor of Moroccan sovereignty if the French military authority had not exercised a true domination over all of the territory of the city of Casablanca (Gidel, Revue Générale de Droit International Public, T. XVII, p. 326);

Whereas there is ground for comparing this Casablanca decision with that rendered in England in 1938 by the Privy Council in the case of Chang-chicheng to the effect that if the immunity of foreign armed forces has for its basis tacit renunciation there is ground for seeking in each case according to its circumstances whether this renunciation of sovereignty can reasonably be presumed;

Whereas it is also without foundation that the appellant invokes the conventions concluded during the war of 1914–1918 between France and the Allied Powers whose forces were found on her territory; these conventions consist so little of a consecration of recognized principles of the jus gentium that the United States of America did not succeed in obtaining from the British Government for their troops sojourning in England, during the whole duration of that first war, the same privileges which they obtained by their convention with the French Government (article by Archibald King, cited above); the foreign troops found in France occupied, moreover, de facto whole portions of French territory; they had obtained certain liberties and had been authorized to create a police organization; if the immunity from jurisdiction which had been accorded to them extended to violations of common law "in their sphere of immediate action," the competence of the local authorities had nevertheless been maintained (contrary to general opinion) for infractions committed by the inhabitants against the security of

the foreign troops (Clunet, *Journal de Droit International*, 1918, pp. 516 and 517; Faucille, as cited above);

Whereas these conventions were based in reality upon a broad spirit of reciprocity, by reason of the assimilation, more or less complete, admitted by the Court of Cassation, by interpretation of Articles 62 and others of the French Military Code, between hostile occupation and permitted occupation; they thus have as their foundation the French Code itself which is not necessarily an expression of the *jus gentium*; it is in this same spirit that certain of these conventions have been concluded with foreign troops which did not represent any Government whose sovereignty had to be respected (the Poles and the Czechs, for example);

Whereas the appellant alleges that these conventions have never been incorporated in the domestic law of France, and that they are not, therefore, binding, and that if the rules which they enunciate have been applied by the French military tribunals this is because they were nothing but the expression of a preëxisting international custom; but this argument is without foundation: let it suffice to recall that even if the factual basis upon which it reposes were exact the tendency to consider the treaty as deriving its binding force vis-d-vis the national judicial official from its own self is more and more manifest in France (Court of Cassation, June 6, 1938, Bulletin 50, p. 349);

Whereas the appellant, taking account of the principle of service on duty already admitted by this Court, maintains that a soldier is always on duty by the mere fact that he is in active service; but if this were true all the discussions in the literature of international law would be without object; immunity from jurisdiction is not recognized for the soldier except in so far as he can be considered as an integral part of the armed force to which he belongs; it may be admitted that this is the case when there is involved an occupation which implies the protection of a public interest of the territory or a portion of such territory, since, within the limits of this territory under control, it can be reasonably maintained that the soldier is always an integral part of the army; but in the case of simple sojourn or passage of troops with a precise determination of the military premises the soldier who leaves the range of effective command of his superiors can not be considered as attached to the military forces to which he belongs in spite of his temporary separation from it except on the condition of being on duty in the interests of this body; there exists no motive for differentiating his case from that of the sailor, as already held by this Court in its decision of February 8, 1943;

Whereas it results from the above circumstances that, outside of the case of service on duty, there exists no international system of a character sufficiently general to be obligatory which extends the principle of immunity from jurisdiction in the case of a permitted sojourn of foreign troops within the territory, as regards violations of the common law committed outside of the military premises; this is the formal teaching of Faucille and the authors whom he cites; there only exist certain divergent opinions and varying prac-

tices which reveal the extreme complexity of the problems posed and the necessity for the regulation of these problems by diplomatic agreement; there existing no convention in the instant case it was the perfect right of the Court of Assizes to declare itself competent on the basis of Article 44 R.O.J. and the first Article of the C.P.M. which is applicable without distinction to all those who while in Egypt commit one of the offenses envisaged by its provisions;

Whereas it is true that the appellant claims by the terms of the second part of his appeal that the purport of the decisions taken at Montreux was to transfer to the jurisdiction of the Mixed Courts penal questions dating back to the period of the competence of consular authorities, and demonstrates that the French consular jurisdiction had always declined to take jurisdiction for the application of the provisions of the French Military Code in judging soldiers attached to an expeditionary force; he deduces therefrom that the jurisdiction of the Mixed Courts cannot have a competence more extended than that possessed by the consular jurisdiction;

Whereas this argument is not well founded; what Egypt obtained at Montreux was the recovery of her full sovereignty in penal matters and the liberty, as a consequence, of determining by her own legislation, without having regard to foreign laws previously applied, the scope of application of her own penal law, under the single reservation of Article 2 of the Convention of Montreux which was in question above; any other solution would limit the Egyptian sovereignty while according to the terms of Article 1 of the Convention each of the high contracting parties declared that it accepted the "complete abolition of the capitulations from all points of view";

Whereas it results from the preceding considerations that the appeal must be rejected;

For these reasons, the Court, reversing the decision of the lower Court, admits the appeal in fact as made within the period allowed by law, rejects it on the merits and condemns the author to pay the costs and orders the confiscation of the deposit of £5 Egyptian.

R. MERCINIER Registrar C. VAN ACKERE

President

BOOK REVIEWS AND NOTES

La Morale Internationale. By Nicolas Politis. New York: Brentano; 1944. Pp. 194. \$1.50.

Nicolas Politis, before his death in France in 1942, had played a vital role in both formulating and making effective a program of international organization. As professor of international law, as delegate to the Paris Peace Conference, as Minister of Foreign Affairs, and as Minister to Paris he served both his country, Greece, and the international community brilliantly and successfully. This volume, to which he had originally thought of giving the sub-title "Essential Bases of European Reconstruction," is a brief presentation of his philosophy of international coöperation as the sole possible foundation for a successful international existence.

He felt that the cause of the current world cataclysm was the conflict between an expanding interdependent economic world structure and a contracting nationalistic political isolationism. Joined to this was the disregard of the moral law in international intercourse—or, as he quotes Bergson, dans nos corps agrandis, l'âme est restée trop petite. A new orientation is necessary in which international law will recognize as its fundamental basis international morality. He defines international morality as "a rule of conduct which while not a part of international law is generally observed by civilized states and recognized by them as indispensable for the safeguarding of their permanent and essential interests."

He then proceeds to list the six essential principles of international morality: loyalty, moderation, mutual aid, mutual respect, justice and solidarity. He analyzes these principles with a wealth of pertinent illustrations and appropriate citations. In their relations one with another states must, to maintain the principle of loyalty, refrain from lying and deceiving, but above all they must keep their word. Pacta sunt servanda or the "sanctity of treaties" is a most vital consideration. In the case of moderation, the definition is simple rien de trop. He finds a remarkable definition of mutual aid in the sonnet of the Greek poet Menander, who says in substance that if in a city the honest people ally themselves against the aggressor against any one of them it is certain that they will be able to live tranquilly sheltered from all danger of attack.

The chapter devoted to mutual respect is a veritable diatribe against economic imperialism and a strong plea for the rights of small states. He finds no excuse for the doctrine of *lebensraum* or autarchy—territorial aggrandizement by force will ultimately defeat its own ends.

International justice is one of the oldest principles of human intercourse— "without justice in the state its citizens have neither peace nor liberty nor happiness." He counsels those governments greedy for glory to study *The Prince* of Erasmus rather than the *Prince* of Machiavelli.

His conclusions, based upon the principle of solidarity, are that Europe must be reorganized on some sort of economic, political, and social federation. He finds the United States system both satisfactory and successful, and Europe must work out a similar organization. Such an arrangement might well be a regional grouping within a universal association of states but such a development in Europe must be achieved.

If he had lived he would have seen his thesis recognized by the American states in the first principle laid down by the Inter American Juridical Committee: "Nations must recognize the priority of the moral law in their mutual relations. . ." Subsequently the entire philosophy of his volume has been recognized and followed by the Dumbarton Oaks Proposals and the Act of Chapultepec. The San Francisco Conference may test the validity of his principles by making them universally effective.

GRAHAM STUART

Stanford University,

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Claims to Territory in International Law and Relations. By Norman Hill. New York: Oxford University Press; 1945. Pp. vi, 248. Index. \$3.00.

Professor Hill presents a clear and compact analysis of the various reasons urged by nations in maintaining their claims to territory in international law and relations. His book is particularly useful at this time in view of the pressing territorial questions calling for settlement out of the Second World War. Professor Hill's lucid style of writing and the elementary presentation of his material make the book serviceable to the layman in this field as well as to the professional who wishes to have a handy review of the various aspects of the problem of claims to territory.

Five main as well as several minor types of claims are reviewed by Professor Hill. The five main types discussed are the strategic, geographic, historic, economic and ethnic claims. Professor Hill points out that the most significant contribution of the nineteenth century to discussion of territorial problems was the introduction and development of the ethnic claim, a direct outgrowth of nationalism. At the Paris Conference in 1919 the ethnic claim received the widest recognition, and it appears to have attained first place in popular esteem.

Miscellaneous non-legal types of claims, which are relied upon by nations less frequently than the five main types and are less specific in content and meaning, include political claims, claims based upon earlier agreements, claims based on sentimental grounds, claims to indemnification by a grant of territory, and claims based upon cooperation in war and upon sacrifices made. A chapter is given to strictly legal claims, including a discussion of symbolic acts and occupation as means of securing title to territory.

Professor Hill examines available devices to minimize or eliminate claims to

territory. His discussion includes the following: (1) the creation of a free zone available for trading purposes by more than one nation to meet economic claims; (2) the neutralization of a disputed area to diminish if not completely nullify the strategic military value of the area; (3) a resettlement of national groups to meet ethnic claims; (4) a plebiscite to implement the doctrine of self-determination; (5) the internationalization of an area to eliminate a deadlock in claims for the same territory; and (6) the mandate system to resolve territorial claims, as used under the League of Nations at the end of the First World War.

JAMES SIMSARIAN

Washington

War Criminals: Their Prosecution and Punishment. By Sheldon Glueck. New York: Knopf, 1944. Pp. viii, 250. Index. \$3.00.

This book is the result of an excursion into the field of international law by a prominent professor of criminal law and criminology. He applies the logic and technique of legal argument with the skill of an expert, but no lawyer's brief can be sounder than the facts and principles upon which it is based. Throughout the book the author undertakes to criticize the attitude of the American representatives on the Commission on Responsibility at the Paris In doing so, he does not always state adequately Peace Conference in 1919. their views which he then proceeds to answer. The author's implication that the American representatives by failing to go along in all matters with their colleagues in the 1919 Commission contributed to the failure of the penal provisions of the treaty of 1919 is quite unjustified. The recommendations of neither the majority nor minority members of the Commission were carried out in 1919 because of political considerations arising after the signature of the Peace Treaty.

When the author discusses war crimes and their punishment in the accepted legal sense and the possibilities of permissible political retribution, he is on solid ground, and, in the reviewer's opinion, if this much is actually accomplished following the present war, an essential and important step will have been taken toward the vindication of international law and justice on this subject. The remainder of the volume is concerned largely with what the author thinks the law ought to be. Whether the law and jurisdiction already existing should be the rule of action or whether new law and jurisdiction should be created and applied were grounds of disagreement in the Com-These questions have likewise disrupted mission on Responsibility in 1919. the present War Crimes Commission in London. The author tries to make out'a case for the latter alternative. This is a temptation to which other writers and some politicians have fallen under the great emotional stresses now prevailing.

GEORGE A. FINCH

Editor-in-Chief.

Military Occupation and the Rule of Law—Occupation Government in the Rhineland, 1918-1923. By Ernst Fraenkel. New York: Oxford University Press, 1944. Pp. xi, 267. Appendices, Bibliography, Index. \$3.50.

This book is the first comprehensive treatise on the Rhineland occupation after the last war and may well prove to be the definitive volume on this phase of international relations.

The work deals with the Rhineland occupation from the armistice until 1923; it does not include the occupation of the Ruhr. Where official and unofficial reports, such as the official "Hunt Report" on the American phase of the occupation, had covered single problems and phases only, this book gives the entire picture, covering the policies and practices of all four occupation powers in their respective zones. To have analyzed the widely scattered source material is in itself a major achievement, made possible by the author's broad knowledge of international law, Anglo-American law, and the various continental legal systems. But the treatment is not limited to legal It embraces the great political as well as the economic and labor questions created by the occupation of a highly developed industrial region. Moreover, through continual reference to situations and questions which may occur in the occupation of Germany after this war, the treatment achieves particular relevance and timeliness. For example, the international lawyer will find great value in the new and revealing approach to the "war crimes" issue (p. 47).

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More than this, however, the book has a political philosophy. Its basic thesis is that the Rhineland occupation constituted an attempt to reconcile military occupation with the rule of law, thus extending to government of a territory by a foreign power those liberal safeguards and institutions which under the governance of constitutional principles prevail within liberaldemocratic countries. Like the Covenant of the League of Nations, which it closely paralleled in its idealism, the Rhineland Agreement failed in its purpose. 'It failed to fit Anglo-Saxon "rule of law" concepts to German bureaucratic realities which demanded, not non-interference with, but restrictive direction of, the executive machine. It failed to fit the "rule of law" concept in its more general sense to the realities of the aftermath of a total war, which demanded the reconstruction and reorganization of a controlled society and economy. Technically not being properly devised for these requirements, the occupation regime was compelled to resort to arbitrariness, which, in turn, gave rise to German nationalistic resentment, later successfully exploited by National Socialism.

There is doubt whether this thesis is as correct as it is fascinating. Arbitrariness, whenever it occurred, seems to have been the result, not so much of technical-legal shortcomings of agreements and regulations, as of political factors which ran counter to the intended liberalism of the regime. According to the author himself (p. 203), the occupation regime, until the time of the

Ruhr invasion, was generally liberal in its practice and policies, and the exceptional cases of arbitrariness referred to in the book are almost all connected with the French desire to go beyond the avowed purposes of the occupation and to detach the Rhineland from the Reich. The ability to reconcile the rule of law with military occupation thus seems to be dependent upon political aims and circumstances of an occupation rather than upon its legal and administrative techniques. Where countries with basically equal political and social regimes are involved, temporary occupation of territory of one by the other can be undertaken under "rule of law" forms. It is only where social systems clash or annexationist aims are pursued under cover of military occupation that "liberalism" breaks down. In the Rhineland such breakdown could have happened for two reasons: a) because of the attempt of the occupants (described in this book) to uphold the traditional German social and economic system against the workers' councils; or b) because of attempts to detach the country from Germany by fostering "separatism" and through similar means. As to a), however, the issue was settled at an early stage outside the occupied zone, so that Allied policy was actually not instrumental for the later character of the occupation in this respect. regard to b), "rule of law" actually broke down in those regions and during the periods attempts were made to separate the Rhineland from the Reich.

One can fully agree with the author's forecast concerning the difficulties which attempts to combine occupation and rule of law may encounter in the future. Where fundamentally irreconcilable regimes are opposed to each other occupation can hardly be based upon rules presupposing non-interference with the institutions of the occupied country. Occupation then becomes that politically final and decisive stage of the war in which the major aims of the belligerents are being put into practice, whether they are "Nazification" or "de-Nazification." Even in the latter case, recent events have proved that return from totalitarian lawlessness to rule of law can scarcely be undertaken successfully by clinging to rule of law procedures, e.g., when weeding out "quislings."

In conclusion it may be remarked that the book is lucid in its form, and the many "asides" of the author testify to a wit not commonly found in legal or political dissertation. They are a constant source of delight to the reader.

JOHN H. HERZ

Washington

Axis rule in Occupied Europe. Laws of Occupation, Analysis of Government,
 Proposals for Redress. By Raphaël Lemkin. With a Foreword by George
 A. Finch. New York: Columbia University Press for the Carnegie Endowment for International Peace, 1944. Pp. xv, 674. Index. \$7.50.

Not a pleasant record, this book, of how a tyranny under the guise of law engulfed substantially an entire continent. The author is an eminent

Polish lawyer and publicist, sometime stationed at Duke University. present work grew out of his desire to provide an analysis, based upon objective information and evidence, of the rule imposed upon the occupied countries of Europe by the Axis Powers. These were, of course, chiefly Germany and Italy, but the material includes also the more ephemeral régimes of Bulgaria, Hungary, and Rumania. The collection and presentation of the most important laws, decrees, and proclamations of the occupying forces, country by country, in excellent English translation, constitute a veritable The part of the book containing these texts is source-material of inestimable value in the making of plans for restoration and reparation, as well as for the practitioner and the historian. The author feels that such evidence is especially necessary for the Anglo-American reader, who, with his innate respect for human rights and human personality, may be inclined to believe that the Axis régime could not possibly have been as cruel and ruthless as has been described.

The laws collected in Part III of the book are those promulgated not only by the Axis partners but also by puppet régimes set up in Belgium, Czecho-Slovakia, France, Yugoslavia, The Netherlands, and Norway. A survey of the texts shows a striking similarity of form and method among all of them, with occasional differences due to local peculiarities. The historical and legislative background is fully explained for each country in Part II. German Axis partner is clearly recognizable as the leader and the main organizer of the system. For this reason the author has set forth in Part I of the book the German techniques of occupation. This is by no means a task easy of accomplishment within reasonable limits. The author describes the various types of administration applied to different geographical units and shows how police methods were geared to political and economic objec-He presents the evidence for his conclusion that the German law imposed upon the occupied countries "is not conceived as human justice but (it) invokes legal techniques simply as a means of administrative coercion"

One of the most original and important chapters of the book is entitled "Genocide" (pp. 79-94). This is a term coined by the author to denote an ancient practice in its modern manifestation. It does not mean immediate destruction of a nation or of an ethnic or religious group but rather "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves" (p. 79). The aim and purpose of genocide laws are readily discernible from the texts. It is astonishing to observe how widely they were resorted to not only against the Slavic peoples of Eastern and Central Europe but also in countries like The Netherlands and Norway. They are the very antithesis of the fundamental principle of international law that warfare is directed against governments and armed forces and not against civil populations. The author refers to this principle as the Rousseau-

Portalis doctrine developed during the eighteenth and the nineteenth centuries and as implicit in the Hague Regulations.

The author is not the first to comment upon the recrudescence in modern times of policies and practices leading toward the extermination of entire populations. His unique contribution consists, firstly, in his presentation of the facts by marshalling the actual laws and decrees themselves, country by country, and labelling them for what they are, legislation for genocide; and secondly, in his analysis of the various attacks upon all the elements of nationhood in the respective fields, political, social, cultural, economic, biological, physical and religious.

The author points out that the policy of genocide is more destructive for a people than injuries suffered in actual combat. "In this respect genocide is a new technique of occupation aimed at winning the peace even though the war itself is lost" (p. 81). He draws attention to the need for a new approach in international law with a view to filling in the many lacunae in the light of these practices. As far back as 1933 the author anticipated this need by submitting a report to the Fifth International Conference for the Unification of Penal Law held at Madrid under the auspices of the League of Nations. He defined two new crimes to which he gave the names "barbarity" and "vandalism" to be punishable in the country of the offender, or in any signatory country, if apprehended there. If such a project had been adopted it would have proved useful as an effective instrument for the punishment of war criminals. The problem has now become infinitely greater. author's detailed recommendations are well worthy of attention. make genocide practices punishable as international crimes such as piracy, the slave trade, counterfeiting, and other so-called delicta juris gentium. The offender would be liable to trial not only in the country in which he committed the crime but in any other in which he might seek refuge (p. 94). The work wisely deals with this question not merely as a war crime but also as a peace problem as well. The planned physical or moral annihilation of populations tends toward the ultimate destruction of civilization itself.

ARTHUR K. KUHN

Of the Board of Editors

The Case of the German Jews vs. Germany: a Legal Basis for Their Claims. By Hugo Marx. New York: Egmont Press; 1944. Pp. 124. \$1.75.

The case of the German Jews is one of terrific force in point of time, politically, historically, and under its human aspects. They were the first victims of Nazi persecutions. Hitler used them as scapegoats. Through their persecution he tested the intentions and the force of the world to resist his far-reaching plans. From their small number of less than 500,000 (in 1933) nearly half have been killed or died as a consequence of concentration camps or other Nazi brutalities. There is scarcely a community in the world which has paid relatively heavier sacrifices in blood, tears, and goods.

Hugo Marx, a jurist of high standing from Germany, has the merit of having been the first to try to treat the juridical aspects of the right of the German Jews to reparation for the torts inflicted upon them. He has dedicated his book "to the memory of my mother who was deported by the Nazis to a concentration camp and died."

The leading idea of Marx is that "the actual existing law will be used in finding a solution to the problem," and he repeats: "the subject matter will be examined from the point of view of lex lata and considerations de lege ferenda will be given only the brief treatment to be accorded hypothetical speculation. . ."

It may be considered to be the common opinion of the civilized world that Germany must make good the wrongs and damages which she has inflicted not only upon foreign countries and persons, but also on her own citizens or those who, at the time when the damage occurred, were her citizens. But there is no common opinion regarding the legal basis and the legal measurement of those damages. It is a much discussed question whether the solution of this problem should be left to German domestic legislation or should be made part of an international instrument which will impose obligations on Germany. Shall the case of Jews and "Non-Aryans" be treated separately from other anti-Nazis of German descent? Shall the concept of nationality yield to the notion of "domicile"? Or, as this reviewer believes, shall all Axis victims regardless of their nationality, race, or creed, have a right to reparation through restitution and compensation?

Marx gives as his first conclusion: "Positive international law compels the recognition of the validity of German legislation against the Jews as national law." Numerous authors have, in the last twelve years, proven that Hitlerian legislation, especially in so far as it is discriminatory and racial, cannot be recognized as "law" because it conflicted with the German constitution which has never been abolished; under international law it came in conflict with the generally recognized rules of civilization and culture. The proclamation of General Dwight D. Eisenhower for the conquered parts of Germany, the armistice agreements with Rumania, Finland, Bulgaria, and Hungary, the announcement of the Crimean Conference ("wipe out the Nazi Party and Nazi laws . . . from the face of the earth"), speak an unmistakable language.

The second and third conclusions of Marx will find generally the same refutation as his first:

2. The expulsion of the Jews from Germany was an act of high policy, a premeditated act of government in whatever manner it has been accomplished. Therefore, individual claims of Jews from Germany, especially of those abroad affected by the confiscatory decree of November 25, 1941, cannot exist.

3. International law provides the basis for reparation of the damage inflicted upon the Jews from Germany. The Jews of Germany represented a minority according to international law. Germany was

bound by the obligation of a universally recognized international law to respect the existence of minorities. In violating this obligation Germany has become responsible and liable for the damage which she has caused.

The Jews of Germany have not been a protected minority in the sense in which this expression was used in the treaties of Versailles and subsequently. They have even refused to be considered as such. Only in the case of Upper Silesia and Danzig, and, to a certain extent, in the Saar after the plebiscite of 1935, was an opportunity to apply to Germany treaty rules regarding minorities afforded.

Marx continues his "Conclusions" by defending the thesis that only states and not individuals can be subjects of international law. But he cannot deny that on the basis of agreements and treaties individuals can bringsuits before international tribunals. Nevertheless, he believes that the right to make claims, resulting from torts and damages to minority rights (which he gives to the German Jews), must be reserved to states which are willing to protect the individuals belonging to minorities, and toward whom Germany was bound to respect the rights of minorities. Which are those states? Marx believes that there exists "an extraordinary relationship between foreign states and the Jews they have received as refugees from Germany which justifies these nations in considering them as nationals." This right of the states cannot be denied. But does there exist a duty or even a readiness of all United Nations, or even of the United States, to employ it? Marx's argumentation is made in a bloodless vacuum. He goes so far in recognizing the validity of the Hitlerian legislation that, as a consequence of the decree of November 25, 1941, which expatriated all emigrating Jews and confiscated their property, he says: "Claims of members of this minority with situs in Germany can no longer exist." To him settlement en bloc "would seem to be not only the only legally permissible method of procedure, but also the only equitable one." The proceeds resulting from the indemnities would be, according to Marx, at the exclusive disposal of the protecting states "unless there should be a special stipulation in favor of the individual members of this minority."

The problem of the German Jews cannot be solved, and even should not be approached, without the just emotion which the endless line of tragedies and cruelties involved has provoked in the conscience of mankind. Those who try to master the legal consequences of the bloody anti-humanitarian, and anti-legal Hitlerian period only from the standpoint of positive, that is written, international law, must fail in their conclusions. Unprecedented events make it a duty for jurists and writers to produce new creative ideas and new roads to justice and to the conservation of basic human rights based on precedents and the laws of the past.

BRUNO WEIL

The Problem of Statelessness. By P. Weis and R. Graupner. London: World Jewish Congress; 1944. Pp. 40. 2/-.

In this pamphlet the difficult problem of statelessness in the post-war world is examined by two international lawyers from separate points of view. Dr. P. Weis analyzes the subject as a broad legal and political problem, while Dr. P. Graupner deals with a special cause of statelessness—as a consequence of the change of sovereignty over territory after the last war. The latter report is of current significance in view of the questions of nationality, many similar to those arising from World War I, which will call for solution at the close of the present war.

Dr. Graupner, following an analysis of the provisions of the Peace Treaties of 1919–21 concludes that the most equitable solution for the problem of statelessness in the coming era would be to (a) determine the nationality of resettled populations by the principle of Habitual Residence rather than by arbitrary principle of Heimatsrecht, and (b) establish a central international tribunal for deciding disputes of nationality, the individuals concerned having immediate access to such judicial authority. The author recommends the fixing of the requirement of Habitual Residence for a date some years prior to the change of the territory with which he has had closest contact.

Dr. Weis, on the other hand, makes suggestions for the legal solution of the problem from a broader point of view. He projects the thesis that the law of nationality is in its present state of crisis due to an exaggerated conception of the state and the unlimited exercise of its sovereign omnipotence, and to the absence of effective international machinery for the enactment and enforcement of universal regulations. Hence, the author maintains, the hope of those adversely affected by prevailing nationality laws of the separate states must be that there will emerge from the chaos of the present war an international community which will create the machinery for the development and enforcement of a system of international law in which individuals would achieve international citizenship by becoming subjects of the law of nations.

The interesting approaches to this difficult topic presented in these two reports should be studied especially by all persons upon whom the heavy responsibility rests for the elimination of this social and legal disease of statelessness.

CATHERYN SECKLER-HUDSON

The American University

The Canadian Law of Copyright. By Harold G. Fox. Toronto: University of Toronto Press; 1944. Pp. lix, 770 pages. Appendix. Indexes. \$18.50.

This manual is a storehouse of valuable information clearly stated. The technical details of copyright protection are presented so simply that young

authors as well as experts may discover the conditions of the protection available to them in Canada. Every statement of fact, interpretation, or practice carries a footnote to its source in law, in court decision, or in other documentary material. An appendix of 150 pages contains the texts of the Canadian Act of 1927, its amendments, rules and Orders in Council together with the texts of the Berne Convention, the Additional Protocol, and the Rome Revision of 1928. The Table of Cases Cited and the Table of Statutes Cited add greatly to the usefulness of the volume as a reference work.

Following a brief "Historical Introduction to the Law of Copyright" in England and Canada, the subject matter of copyright and the protection granted to various kinds of works under the Canadian Statute, the duration of the rights, ownership, assignments and licenses are treated in separate chapters, which to all intents and purposes are monographs, complete in Although this method involves repetition and lengthens the work, it is a repetition of convenience to the reader; it saves his time: for all the data essential to understand the topic under discussion is utilized without reference to similar items which may be included elsewhere. example, the provision of the Berne Convention, Art. 4 (2), that "The enjoyment and exercise of these rights shall not be subject to the performance of any formality," appears on page one, in the chapter presenting "The Definition and Nature of Copyright," again in connection with the acceptance of the principle in the Canadian Copyright Law of 1921 so that copyright subsists by the mere fact of authorship, and, a third time, when the history of the acceptance of the provision is recounted in the chapter on "International Copyright." Thus the reader is not required to interrupt his thought to look elsewhere for the wording of the provision that is important to the understanding of the subject under discussion.

The chapter on "Agreements Between Authors and Publishers" (XXIV) and that on "Performing Right Societies" (XXI), which present modern business phases of copyright practice as interpreted in the courts, make the volume an indispensable source of information in connection with the exploitation of literary and artistic works for profit. Provisions of the Copyright Amendment Act of 1931 in the matter of performing rights and the establishment of a Copyright Appeal Board, together with the juridical opinion quoted in chapter XXI are food for thought for those in other countries, who are faced with serious controversies in this field and who wish to improve relationships, both national and international, in matters connected with performing rights. This phase of Canadian copyright legislation is also of particular interest in view of the recent meeting of FISAC (Interamerican Federation of Authors and Composers) that was held in Havana in January 1945 and of the meeting of the International Federation which is now being projected.

Mr. Fox does not digress to make proposals for the improvement of either

the law or the practice, especially in the post-war world, as a citizen of the United States might be tempted to do. He always adheres strictly to his subject, "The Canadian Law of Copyright." In doing this he makes a real contribution in the 200 pages devoted to the Infringement of Copyright, and to Civil and Summary Remedies therefor. If there is any one matter more than any other that is cause for uncertainty to the owners of literary and artistic works, especially to those who have invested large amounts of capital in anticipation of profitable returns, it is the vagueness of information in regard to what protection against infringement may be expected in the countries where works may be distributed. If comparable pages, carefully documented with references to court decisions upon which the narrative rests, could be published about provisions in regard to infringement and the remedies therefor in Argentina, Britain, Brazil, Chile, France, the Netherlands, the Soviet Union, Sweden, et al., it might be possible soon thereafter to make a careful global study of the matter and recommend some international standard practice in the matter of remedies for infringement. In fact, a series of similar volumes on the copyright law of the major countries of the world would be a contribution to the improvement of international copyright relations. Removal of uncertainty in these matters might facilitate the interchange of literary and artistic works until such time as greater similarity in regulations and practices can be achieved.

EDITH E. WARE

Washington

Pioneers in World Order: An American Appraisal of the League of Nations. Edited by Harriet Eager Davis. New York: Columbia University Press; 1944. Pp. x, 272. Appendix. Index. \$2.75.

Eighteen Americans, formerly associated with the League of Nations, have each written a chapter of this book, which is both an appraisal of the past and a guide-post for future pioneers. Four chapters—"The Framework of Peace," "Security," "Disarmament," and "World Economics" are discussions of fundamental political and economic relationships between sovereign states, with their conflicting interests, against which League efforts became almost powerless. Three chapters, "Control of Special Areas," "Dependent Peoples and Mandates" and "Refugees" present discussions of specialized aspects of larger political problems. Six chapters contain discussions of sections of League work in which considerable progress was achieved. These include two chapters on specialized economic subjects, "International Double Taxation" and "Standardizing World Statistics," and four on "Dangerous Drugs," "International Health Work," "Social Problems," and "The League of Minds." Two chapters are devoted to the work of "The World Court" and "The International Labor Organization," and one to the operation of the world's first "International Civil Service." A Foreword by Raymond B. Fosdick and an Appendix containing the "Declaration of the International Labor Organization" at Philadelphia, May 10, 1944, complete the Volume.

One theme runs through many of the chapters, namely that no international organization will "be able to withstand the greater shocks unless the world's principal governments give it their full support." Although the work of the Intellectual Coöperation Organization described by Mr. Davis was modest and meagrely financed, the problem with which it attempted to deal is the most fundamental of all. For behind the governments which failed the League were the peoples who failed to understand the nature of the world in which they lived. "A reliable peace . . . calls for a meeting of minds among nations, for popular sentiment and support."

The chapters by Sweetser, Hudson, Goodrich, Gilchrist, Durand and May discuss effectively the lessons of the past in relation to present and future problems. The Chapter on the ILO gives a good picture of the interrelationships of social and economic problems and the institutions for solving them. The reviewer misses from the Chapter on the "International Civil Service" an analysis of the problems peculiar to an international staff which the United Nations organizations must still face,—such as political pressures, equitable salary scales, privileges and immunities, and standards for professional training. Perhaps the absence of Americans in those League sections accounts for the omission of a chapter on Transit and Communications; there is no consideration of the crucial questions of League finances; and only incidental discussion of constitutional and procedural aspects of the League Assembly and Council.

The reviewer does not know how much of the unity of style is due to the Editor and to the Advisory Committee which planned the series, but the result of their efforts is gratifying.

URSULA HUBBARD DUFFUS

United Nations Interim Commission on Food and Agriculture

International Monetary Cooperation. By George N. Halm. Chapel Hill: University of North Carolina Press; 1945. Pp. viii, 355. Appendixes. Index. \$4.00.

Dr. Halm has written a timely and interesting book and the University of North Carolina Press must be complimented on the speed with which it has been brought before the public. The book consists of about 200 pages of text and 150 pages of appendixes, reproducing the full text of the principal monetary plans and of the Bretton Woods Agreements. The absence of a bibliography is regrettable; it would be particularly useful in view of the large and scattered literature of the subject.

Dr. Halm's study falls, broadly speaking, into three parts. The first is devoted to an exposition of experiences with international monetary cooperation under the gold standard and during the inter-war years, as well as to an outline of the basic objectives of such future collaboration. An outline of a hypothetical "International Reserve Bank" is included, presumably as a standard in terms of which the recent proposals should be appraised. The second and main part of the book consists of a discussion of the principal features of the International Monetary Fund as they appear in the Keynes and White Plains and in the Bretton Woods Agreements. Finally, there is one chapter devoted to the International Bank of Reconstruction and Development (assigned a secondary and incidental place in the volume under review). In his conclusions, Dr. Halm strongly (and, in this reviewer's opinion, rightly) advocates the adoption of the Bretton Woods proposals. The Fund, in particular, he considers as "the only practicable multilateral solution of the world's monetary problems. To fail to back up the Fund proposal means to risk destruction of the last chance for a return to healthy multilateral trade" (p. 204).

Dr. Halm's method is, throughout, a comparative one. This makes the study particularly interesting to the technical and academic reader. tunately, in its comparative aspects, the study is not well balanced: reviewer feels, for instance, that the Keynes Plan has not only received relatively more attention than any of the other Plans but even more than the final text of the Bretton Woods Agreement on the Fund. As to the latter the reader does not get a fully integrated picture of its structure and operations; this will reduce the value of the book for those primarily interested in the practical implications of the Fund. There are many points of theory and interpretation where this reviewer dissents from Dr. Halm; to consider them would exceed, however, the scope of this review. It might be mentioned, however, that the reviewer does not share Dr. Halm's opinion that regional currency arrangements (such as the sterling area) are compatible with the spirit of the Fund: sooner or later, they result in "preferences" and, therefore, in discriminations. Dr. Halm's case in favor of the Fund would be stronger were his anti-gold standard bias less pronounced. He might also have strengthened it by pointing out more forcefully that "Schachtian" economic methods might become prevalent in England should the Fund be rejected by Congress. This would make it impossible to obtain, after the war, a well integrated world economy.

MICHAEL A. HEILPERIN

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The Super-Powers. By William T. R. Fox. New York: Harcourt Brace, 1944. Pp. 184. \$2.00.

Until recent times the study of international relations in the United States has been dominated largely by persons who have taken one of three approaches. First there have been the historians who have considered international relations merely as recent history, in which the student is handicapped by the absence of an adequate amount of available data. A second

group, the international lawyers, have properly concerned themselves primarily with the legal aspects of inter-state relations, but they have seldom made a serious effort to inquire into the fundamental reasons for the continuing incompleteness and inadequacy of this legal nexus. Finally, there have been those who have been less concerned with international relations as they are than with the more perfect system which these idealists would like to build. Only recently—and belatedly—have students undertaken to examine the fundamental and persistent forces of world politics, and the institutions which embody them, not with a view to praise or to condemn, but merely in an effort to provide a better understanding of these basic drives which determine the foreign policies of states. Thus the political scientist is moving into the international field at last.

Mr. Fox's little book is symptomatic of this new trend. He begins with a forecast of the new power distribution of the postwar period, which leads him to place proper emphasis upon the unprecedented predominance of Britain, Russia, and the United States, and he proceeds to examine both the forces which will tend to drive these "Super-powers" apart and those which will favor their continued collaboration when they will no longer have the binding force of a common enemy to hold them together. The balance-sheet which he has prepared is "realistic" in the best sense of that much-abused word. It is a book to be read—and pondered—by every literate citizen.

In making this analysis Mr. Fox does not allow himself to be diverted unduly by the organizational approach to the problem. While he is properly appreciative of the importance of postwar world organization he avoids the pitfall of believing that the mere existence of an organization will, in itself, be the great panacea for all our troubles. On the contrary, he is fully aware of the fact that the future success of the organization will be largely dependent on the ability of these great states to effect a reasonable harmonization of their respective interests and he realizes that while the organization can contribute to this result it cannot possibly remove the solution of the problem from the political level. In this respect his defense of what is commonly termed "power politics" is a badly needed corrective to the thinking of our time.

On the whole the results of his examination are encouraging. He stresses the fact that each of the three is reasonably invulnerable to attack from the others, that all three have reached a satisfactory degree of "approximate territorial satiety," and that all three have a greater danger in a resurgent Germany than they have from each other. To this list he adds what he terms "the principle of the economy of joint action," which is another way of saying that each has far more to gain by collaboration with the others than by an isolationist policy of unilateral action. For the United States this means that "immediate and continuing collaboration in peace with her wartime allies offers so much greater dividends than spasmodic, reluctant, compulsory, and eleventh-hour participation."

This does not mean that collaboration of these three states is enough to meet our needs, and Mr. Fox emphasizes the conclusion that it is "not a grand design for a brave new world in which the menace of war has forever disappeared." It is, however, a first and an essential step which will assure peace for our time. And this is a goal which, while it will not satisfy the perfectionists of the "all or nothing" school, will appeal to those who have learned by the hard lessons of a global conflict that Utopia cannot be legislated into existence by a careful blueprint.

Columbia University

GRAYSON KIRK

The International Secretariat of the Future. By a Group of Former Officials of the League of Nations. London: Oxford University Press; 1944. Pp. 64. Appendix. 2/6.

Among the not too numerous studies on problems of international organization devoted to the administrative aspect, this slender volume merits a special place and more attention than its size suggests. Its exclusive aim is to make the experience of the past available, in a condensed form, to those interested in the future shape of international administration. Its chief virtue lies in the balanced judgment and in the expert knowledge of all questions on which it touches. Its defects lie in the basic assumption underlying the whole study that the future international headquarters will essentially follow the patterns established at Geneva. There is, for instance, no adequate reference to the administrative problems arising out of the need for regional headquarters and hardly any reverence at all to the changes in the concepts of organization, of international administrative leadership, and of staff problems which will become necessary in consequence of the presence. in considerable numbers, of citizens of Soviet Russia and the United States in future international secretariats. Moreover, it could hardly be expected that a report drawn up by former officials primarily responsible for the structure and internal evolution of the League Secretariat would concentrate upon a critical analysis of the experience or probe into the basic problems of the Secretariat.

In 64 pages a tremendous amount of ground is covered: international loyalties, national composition and recruitment, international administrative leadership, external relations, budgetary questions, seat of the organization and, in addition, a great number of major and minor questions. As it is impossible to give even a tentative resume of the suggestions contained in this publication within the scope of a short review, one passage, not entirely chosen at random, may be quoted as a sample of the kind of reasoning and recommendations found in the brochure. Speaking of the spirit of international loyalty required of international public servants the London report states:

The necessary corollary of demanding international loyalty from the service is assurance that an official will not be penalized if his duties

involve an attitude which is contrary to the policy of his own country on a particular issue. Officials who are seconded to the service are particularly vulnerable in this respect. Experience shows that the danger is real: . . An official is entitled to consider that the true interest of his country is bound up, in the long run, with that of the organization of which it is a member. If this is explicitly recognized, and applied in practice by Governments, it will be fully understood by public opinion.

Considering the fact that this report is the result of a collective effort, the booklet is unusually readable. Its most valuable contribution, perhaps, is an appendix signed individually by one of the experts, Mr. A. Pelt, in which the former director of the Information Section, develops a new approach to the public relations work of the international administration of the future. In order to be properly appreciated and used the booklet requires considerable familiarity with the inner workings of the League Secretariat. It is certainly not a primer in international administration.

EGON F. RANSHOFEN-WERTHEIMER

Washington

America's Far Eastern Policy. By T. A. Bisson. New York: Macmillan; 1945. Pp. xiii, 235. Documents. Index. \$3.00.

The memory of people is always short when it comes to past events in foreign policy, particularly if those events have demonstrated the inadequacies of that policy. There is constant need for reappraisal, a need which cannot await the research of the diplomatic historian fifty years later when all the documents are available.

Mr. Bisson's study of American Far Eastern policy fills a current need when the American people should seriously consider our past record, analyze our mistakes, and begin to formulate the essentials of the new Far Eastern policy which must come into being at the end of the War.

In five excellent and brief chapters the author succinctly surveys our Far Eastern record to the outbreak of Japan's attack on China in 1931. Nine subsequent chapters are devoted to a more detailed description and analysis of American policy to the beginning of 1944. The author has a happy facility for combining a clear exposition of American policy with the trend of the world events so that the reader is not left without a proper setting for his conclusions. The inclusion of thirty-six significant documents in an appendix adds greatly to the book's reference value.

In his first two chapters, "Retrospect and Preview" and "Traditional Aspects of American Policy," Mr. Bisson makes a real contribution in giving the reader a perspective on the past century of our Far Eastern relations. He rightly points out that for most of this period, until 1931 in fact, "The fulcrum of Far Eastern politics, on which the policies of all the powers including the United States have turned, has been the weakness of China" (p. 12). He also emphasizes that American policy was directed

toward maintaining equality of commercial opportunity in China and China's independence but that reservation of American rights was always carefully asserted. This proved to be a weakness since it led to negative actions of protest when our rights were infringed and placed a premium on inaction in the hope that such infringements would not last. This policy also led to a mis-appraisal of the significance of Japanese aggression as a "dynamic factor" in Far Eastern relations. The author states that as a result "The policies of other powers were a response and a reaction instead of independent initiative." It would have been desirable if the author had emphasized these points more than he did, but they are there for the discerning reader to ponder.

In his conclusions, Mr. Bisson asserts that America will face a whole set of new conditions in the Far East which will demand a new Far Eastern Policy. He clearly summarizes these new conditions and indicates the broad outlines of a new policy which he says must be merged with "a strong and progressive world organization . . . in a world program for the welfare and advancement of the Far East."

This book should be a handbook for policy-makers and a guide to public opinion. There is no better exposition of our Far Eastern policy to date.

WILLIAM C. JOHNSTONE

The George Washington University

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The Road to Teheran. By Foster Rhea Dulles. Princeton: Princeton University Press; 1944. Pp. viii, 279. Index. \$2.50.

Written primarily for the layman, this compact volume on Russian-American diplomatic relations during the past one hundred and fifty years is stimulating, thought-provoking, and above all, most timely. The author is well-qualified by experience and training to deal with this subject, having served as a foreign correspondent for a number of years in the Far East. He is now professor of American History at Ohio State University.

Dr. Dulles approaches his subject necessarily from an American point of view, since his treatment is based primarily upon American sources, particularly contemporary books, newspapers, magazines, and monographs. This has resulted in perhaps a livelier account than is usual in this type of writing. Beginning with the unsuccessful mission of young Francis Dana to St. Petersburg to secure recognition from the autocratic Catherine II for the struggling American colonies, approximately one-half of the book is devoted to the period 1781–1917. The remainder of the volume is divided almost equally between the periods 1917–1933 and 1933–1943.

The author's thesis is that, despite periods of misunderstanding and friction, the past history of Russian-American relations reveals that both nations have a "community of interests" based upon similarities in background and character of peoples, parallel objectives of trade and commerce, the fundamental interest of both in the maintenance of world peace, and a

solidarity based upon national interests which was strong enough to prevent the two nations from ever fighting each other as declared enemies and which has resulted in both being on the same side as allies in the present conflict.

The contrast between the parallelisms in the foreign policies of the two nations and the conflict in political ideals has always been evident, but the author maintains that this has not prevented either nation from acting in concert with the other at different times, as, for example, in attempting to maintain together the freedom of the seas against England during the Napoleonic wars. Nor has it prevented each from sympathizing with the other in times of national crisis, as the United States did with Russia during the Crimean War, as Russia did with the North during the Civil War.

Fundamental interests which have drawn the two nations together in time of world crisis in the past, as for example, the threat of Japanese imperialism in the Far East with the dawn of the twentieth century, still exist, Professor Dulles asserts, and will be the basis upon which they will continue to set aside their political differences to remain in accord upon the common policy of creating and maintaining an enduring world peace.

Realistically, the author points out by abundant illustration that the road to Teheran has by no means been altogether smooth. More often than not the dominant tone of the relations between these two world powers has been discord and friction. Particularly was this true of the troubled period following the Bolshevist revolution, which the author analyzes most carefully. Nevertheless, the author stresses, the traditional friendship between the two countries has survived dissension, controversy, and even conflict in limited form. A realistic appraisal of national self-interests has been the basis of what the author believes to be an enduring respect and friendship.

The road to Teheran has now become the road to Yalta. This reviewer is inclined to agree with the author's conclusion that "there should be no reason, having for so long endured the perils of conflicting ideologies, why we should not respect one another's rights to self-government in a future world wherein we can together exert an influence that might well prove decisive."

JAMES R. STRAHAN

Richmond, Indiana

NOTES

English Courts of Law. By H. G. Hanbury. New York: Oxford University Press; 1944. Pp. 192. Index. \$1.25. After perusing any international law case book, no student should be unaware of the role played by English courts in the application and development of international law. Unless he is a legal technician, however, he is often ignorant of the juristic setting from which these cases arise. This setting is described in this little book, one of the volumes in the Home University Library series.

After a penetrating initial chapter in which the relation between law and morality, the character of law and legal sanctions, and the place of judicial decision in law making are examined, the author devotes six fruitful chapters.

to the development of English law, procedures, and courts. In a hundred pages he shows the legal importance of the Norman Conquest, the feudal land law, the reform of Henry II "the great centralizer," the contributions of Edward I, the struggle between civil and common law courts, and the use of legal fictions and equity as ways of reconciling legal rigidity with social change. This historical analysis, highly informative in content and charming in style, is the most distinctive contribution of this work, which unravels for the amateur much of the material so comprehensively covered by Sir William Holdsworth's History of English Law.

The last three chapters include an analysis of modern English judicial organization, the place of judges in the British constitutional structure, and

the nature of the legal profession.

This book should prove enlightening and suggestive to students of international law. It is known that the House of Lords in its judicial capacity, the Judicial Committee of the Privy Council, and the various divisions of the Supreme Court of Judicature have passed on matters involving principles of international law. This volume will serve to suggest answers to the questions "why" and "how" such courts have been able to influence the international legal stream. Whatever may be true of the future, international legal development, like the English, has preferred the "fortuitous to the systematic." The "fortuitous" element in English law is here explored with sustained scholarship.

ARTHUR FUNSTON

Earlham College

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National and International Stability. By P. S. Gerbrandy. Cambridge: Harvard University Press; 1944. Pp. 69. This small volume is the American edition of the Taylorian Lecture delivered at Oxford in 1944 by the Prime Minister of the Netherlands. Having been Professor of International Law at the Free University of Amsterdam before he became Prime Minister, Gerbrandy is a scholar of high standing as well as a statesman, and in this lecture speaks in both capacities. That is, he gives a brief but excellent and scholarly review of three great Dutch writers, Althusius, Grotius, and Van Vollenhoven; and upon their theories he builds his own statesman's concept of the things necessary to international stability. Briefly stated, the principal requirements for such stability seem to be these: (1) retention of national states but with limited sovereignty; (2) the organization of these states into a cooperative commonwealth, presumably on the order of a federal union ("in the Europe which reveals itself to our eyes in the light of medium and small natural communities, there is ample space for Althusius' shades, between a centralized state and an association of states"); (3) the duty of international intervention when states like Germany become tyrannical at home and therefore dangerous or potentially dangerous abroad; (4) an international police to enforce the will of the international community.

The views expressed in this lecture, much simplified in this summary, would be important if Gerbrandy were only the professor that he once was; they are all the more significant since he speaks as the Prime Minister of a small Power with all the traditions of the Netherlands, and may to some extent be assumed to speak the views of small states generally on the matter of international organization. Professor Carl J. Friedrich of Harvard, whose edition of Althusius is particularly noticed by Prime

Minister Gerbrandy, writes a brief preface. The book is a neat and significant addition to any good library.

CLARENCE A. BERDAHL

University of Illinois

League of Nations Treaty Series, Volumes 203 and 204. Geneva: League of Nations 1944. Pp. 443, 470. The appearance of these two volumes at a time when most of the world is occupied with prosecuting a disastrous war is little short of a sensation. It attests not only the continued functioning of the Secretariat of the League of Nations but also the vitality of one of its great services. The two volumes present the texts and translations of seventy-five international instruments registered at Geneva from 1940 to 1943. To fifty-two of these instruments the United States is a party; indeed many of them were communicated for registration by the Government of the United States. The later volume also contains (33 pages) information concerning current action taken with respect to previously published texts. The texts of 4822 principal treaties or engagements have now been published in the 204 volumes.

The whole Treaty Series is, of course, of immense usefulness to officials as well as to jurists, and it seems imperative that it should not be discontinued in the reorganization which is in prospect. Forty years of agitation preceded the inauguration of the Series; twenty-five years of publication have proved its value. Having so long lived with it and by it, the profession would now be lost without this statute-book.

MANLEY O. HUDSON

Of the Board of Editors

Plan for Action. By John Russell Hancock. London: Whitcombe and

Tombs, 1944. Pp. 144. Appendixes.

This little book from New Zealand contains in its 144 pages more meat than most heavy volumes. It breaks new ground with its sweeping proposals, which are well worth study by anyone seriously interested in the ulti-

mate shape of world society.

The "plan for action" is nothing less than a program for "functional" world government, supported by concise but well-reasoned discussion. Such a government, the author explains, would not be a political organization with centralized legislative power; it would consist of a series of legislative "Authorities composed of experts, which would be coördinated by a non-legislative supervisory body, regulated by a world judiciary and supported by a world police force. Its activities, as well as the world laws it enacted, would be confined to the international field. Sovereignty here would rest in humanity, whereas in the domestic field nations would still be sovereign.

The overall world body would be a Congress of World Citizens, with an equal number of delegates elected by the people of each country. This body would exercise control over world government activities through a Coördination Board, which it would elect. The Board would appoint a Coördination Commissioner, a business manager for the world, and a World

Police Commissioner.

The real motive force of world government would be the Authorities composed of an equal number of experts elected by all countries. In some cases they would be chosen by the states, in others by various associations and or-

The Authorities would comprise a legislaganizations in the field covered. tive assembly, an executive board, and administration machinery. regulations would govern international life, but could be challenged before the world courts. Should there be a deadlock on a matter of principle, it would be solved by a world referendum. The author believes that this type of international government has been made possible by the radio. He makes a good case for his assertion that it would eliminate the economic, political,

military, nationalistic, and territorial causes of war.

To this reviewer Mr. Hancock's book is of particular interest because it proposed a new form for the ultimate world government towards which economic and political evolution are inexorably driving mankind. This must either be a centralized government imposed on the world by force by some Power or Powers after victories in a series of world wars, or a government freely accepted by the peoples of the world. With regard to the former, this reviewer disagrees with Mr. Hancock's belief that it would be impossible, for Germany would have passed perhaps the most difficult stage on the road to world dominion if she had won this war.

With regard to the latter, Mr. Hancock's plan suggests an alternative to the eventual world federation which has been so widely discussed. It avoids some of the problems of the latter which appear so difficult to solve, such as a form of representation which would prevent the advanced peoples of the West from being reduced to a small minority of a federal world congress and the problem of fitting non-democratic countries into a federal world system. For this reason and because of its carefully thought out argument and conclu-

sions, it merits serious attention.

LIVINGSTON HARTLEY

Washington

Arbitration in International Controversy. By Frances Kellor and Martin Demke. New York: Commission to Study the Organization of Peace and American Arbitration Association. Pp. ii, 98. Index. This pamphlet, with a Foreword by Prof. James T. Shotwell, devotes itself for the most part to a discussion of the controversies likely to demand solution between propertyowners and merchants of differing countries following the termination of present conditions of war. It usefully urges the solving of such personal difficulties by organized arbitration. In a lesser degree the booklet pays attention to what are to be regarded as disputes of a strictly international character—demands taken up by one country on behalf of its nationals because of wrongful acts of the agents of another country and for which it is sought to hold the latter country responsible.

JACKSON H. RALSTON

Palo Alto

Victory Without Peace. By Roger Burlingame and Alden Stevens. York: Harcourt Brace, 1944. Pp. 335. Bibliography. Index. This is a new kind of book, and a very effective one. It is the story of the war won and the peace lost twenty-five years ago, told in semi-dramatic form yet with careful regard for historical accuracy. The principal characters involved in the great tragedy of 1918-1920 often speak in dialogue form, usually as their words have been recorded, but sometimes as the authors believe they would have spoken under the circumstances. The evidence behind each incident is stated in detailed notes on each chapter at the end of the book. A great deal of research went into the preparation of the text and it reflects accurately the fateful drama which left us without peace.

The story centers around the great figure of the time, Woodrow Wilson. It traces his conflict with Senator Lodge and other members of the Senate through to the bitter end, but with no trace of bitterness. The story begins in our period of neutrality and ends in the era of normalcy with Wilson's last public and prophetic words.

In between there is new evidence concerning the election of 1918, Wilson's tremendous hold on the plain people of the world at that time, and a splendid account of his heroic appeal to the American people in 1919 which broke him

physically.

This is the main narrative, but by no means the whole book. The authors have made a real effort to portray the main events which were occurring in Europe. There is extended coverage of developments in Russia, very pertinent to the present and future, and the last chapter is largely devoted to a vivid glimpse of the new Czech republic—best state produced by the last

war in Europe.

The book is featured by some beautiful writing and by keen insight into the events of the time. It is seldom that two authors of different ages and backgrounds collaborate as fruitfully. The book is short. It will hold the average reader and repay the student of international affairs. Victory Without Peace is a fine and timely contribution toward a fruitful end for the current war, the catastrophe that should never have been allowed to happen.

D. F. FLEMING

Vanderbilt University

International Relief in Action, 1914–1943. By Hertha Kraus. Scottdale, Pa.: The Herald Press; 1944. Pp. viii, 248. Appendix. Index. \$1.25. This is a unique book, a pioneering effort in the field of training for international relief work. It is a collection of fifty-seven cases of relief operations, representative of the various types of work done since 1914. Nearly all the cases deal with the relief of civilian groups which have been exposed to the terrible ravages or aftermath of war. A few deal with work among prisoners of war. They cover the activities of thirty-nine agencies, both governmental and private.

The cases are arranged in three broad categories of activity: I. Providing basic protection for large groups in dire circumstances; II. Building community services; and III. Relocating displaced people. In the first category, the establishment of the Commission for Relief in Belgium in 1914 is discussed as an example of provisioning an entire nation. Also discussed here is the creation of the neutral zone in Shanghai in 1938 to protect

250,000 Chinese civilian refugees from the hostilities in that region.

The second category contains forty cases illustrating the provision of food, clothing, shelter, health services, child care, work relief, education, recreation, and training of native leadership. The third category includes fourteen cases illustrating the provision of temporary havens for refugees, the repatriation of displaced people, transfer of populations and permanent resettlement of refugee groups.

The book will be especially useful to those wishing to prepare for international relief work. In fact, it was the lack of teaching materials in this field which prompted its publication. Each case is followed by a series of

excellent questions designed to point up the principle problems raised in the case. These questions are very thought-provoking, and a careful consideration of them will give a thorough insight into all aspects of foreign relief work. The Appendix contains a suggested outline for a semester course on the subject, a brief description of each of the thirty-nine principal relief organizations mentioned in the book, and an extensive and classified bibliography. The author, who is Associate Professor of Social Economy and Social Research at Byrn Mawr College, has devoted her lifetime to the subject, and is at present on the staff of the UNRRA Training Center at the University of Maryland.

ELTON ATWATER

District Training School, Laurel, Maryland

El Problema de los Refugiados. By Gustavo Gutiérrez. Havana: Editorial Lex; 1944. Pp. 105. This pamphlet restates the message of a speech delivered by the author before refugees organisations in Havana and adds documents concerning the evolution of the refugee problem and the decisions of the UNRRA Council. Dr. Gutiérrez is the Cuban member of this Council and a member of the Cuban War Refugees Board. He was the Chairman of the Sub-Committee on the Politics of Assistance to Displaced Persons in the First Session of the Council in Atlantic City and is now Chairman of the Sub-Committee on Displaced Persons in the Western Hemisphere.

His audience represented men who, united by the same fate, are refugees from Nazi-Fascism, comprising three main categories: nationals of the United Nations, stateless persons, and—finally—nationals of enemy and ex-enemy countries persecuted by their own Governments because of their race, religion or political creed. They were—many of them since 1933—accustomed to be the object of aggressive or protective actions, without any opportunity to influence the decisions by "due process of law" or through

their own democratic vote.

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This human background is closely connected with the juridical aspect of the problem which forms the ultimate objective of the pamphlet: to show the first steps, taken internationally towards the restoration of the rights of

man and human dignity, so gravely violated since 1933.

Dr. Gutiérrez deals specifically with the interpretation of the Agreement establishing the United Nations Relief and Rehabilitation Administration, which was signed on November 9, 1943, by 44 Nations. He does so not primarily with a scientific but with a humanitarian purpose to make the greatness of this initiative clear to people who are dependent on its practical results. But he gives at the same time a highly illuminating illustration of the difficulties encountered in interpreting and handling this Agreement. The booklet is based on the results of the First Session of the Council in Atlantic City (November 10-December 1, 1943).

It starts with a short survey of the whole scope of UNRRA's activities (p. 16-28). The main topic is the examination of the refugees' juridical situation. The author stresses the unrestricted authorization of the UNRRA to organize an all-embracing aid for refugees whatever their origin and wherever they may actually stay. But does this authorization imply an obligation? The author gives strong arguments for the opinion that the Administration has to include in its relief and rehabilitation all refugees

regardless of their nationality who had to leave their homes because of

persecution of a racial, religious, or political character.

It is of special value that the author illustrates his arguments through animated pictures of the deliberations within the decisive Committees (see pp. 39, 45, 69). In passing he touches on questions of specific juridical interest, such as the meaning of the preamble of the UNRRA Agreement, the binding force of the "broad policies" to be taken from the Resolutions "adopted" and the Committees' Reports "accepted" by the UNRRA Council, and the real significance of the "priorities" in the repatriation and return of refugees.

In the Second Session of the Council the author's basic opinion was recognized as far as the refugees in Europe are concerned, whether they may be found in liberated, in enemy or in ex-enemy countries. Doubts subsist for refugees in territories never occupied by the enemy, especially in the Western Hemisphere. The Committee on Displaced Persons still has here to convert the high spirited impulse which created the UNRRA into inter-

national justice in action.

HERBERT DORN

Havana

War Through the Ages. By Lynn Montross. New York: Harper; 1944. Pp. xiv, 941. Tables. Index. \$5. The mechanics of war—strategy, tactics, weapons, morale, and leadership—as evolved down the centuries from the Battle of Marathon in 490 B.C. to June, 1944, is the theme of Mr. Montross' book. This study course in the history of organized violence is intended primarily for the layman and civilian who is now a chief objective of war. It should also help armchair strategists, war correspondents, and military commentators to acquire a certain historical perspective of their subject.

Mr. Montross bestows impartial admiration on all the great practitioners and theoreticians of "the art of war," among them Hannibal, Napoleon, Clausewitz, and Mahan. He is a careful chronicler of the development of infantry techniques, projectiles, and mechanized warfare. Performance, in terms of effective destruction of human beings and of the products of human labor, is explained and analyzed against the background of historic battles

in seemingly endless and depressing array.

That the civilian is the ultimate victim of today's total wars is by far the most significant lesson of the book although easily missed in the nearly thousand pages of closely printed military data. Perhaps if Mr. Montross had less over-all respect for war as a science and for its practitioners as scientists he would be less inclined to accept as inevitable the unfolding of future chapters in this seemingly perpetual catalogue of mankind's organized efforts to destroy itself. In this connection it is interesting to compare this example of a civilian writer's acceptance of the inevitability of war with the passionate plea and program of a current practitioner of one branch of warfare, Air Marshal William A. Bishop, who, in his book Winged Peace, urges world government to prevent war and says: "... that body must not merely control intercontinental and international flight—it should direct and operate it" (author's italics).

Mr. Montross has combed the bulk of ancient and modern writings on war, drawing on numerous familiar and some—to the layman—unfamiliar sources. It is therefore surprising to find no reference to Jean de Bloch's

monumental work The War of the Future in its Technical, Economic and Political Relations, published in 1897, in which the true nature of modern war as a total disorganizer of society was predicted. Perhaps the works of men like Bloch and Bishop were purposely by-passed since the authors are not merely theorists or war practitioners but also fervent advocates of the abolition of the profession based on their conviction that under modern conditions not peace but war is becoming utopistic.

EDITH WYNNER

New York City

An Intelligent American's Guide to the Peace. Edited by Sumner Welles. New York: The Dryden Press; 1945. Maps. Index. Pp. vi, 370. \$3.75. Those who expect from the title "An Intelligent American's Guide to the Peace" to find a peace plan will be surprised for the former Under Secretary of State, Sumner Welles, is the editor of a compendium of what every intelligent American should know about the nations in order to understand

the issues involved in a world peace.

In a brief introduction to this compact encyclopedic volume, Mr. Welles expounds the thesis that the American people are at the historical cross roads, one way leading to ultimate disaster and the other to national safety. With isolation no longer a tenable way out and every family in this country directly affected by the decisions that must be made, there are two objectives to be sought. The Government should keep the people informed on "every aspect of the negotiations undertaken with foreign governments concerning the peace settlements envisaged" and "every feature of the discussion leading to the creation of an organized society." The second objective is to get the citizens to "study and discuss these grave problems" in order that they "be in a position to make a wisely reasoned choice when the time comes for their voice to be heard." Mr. Welles believes that this book "will facilitate the endeavor of the average citizen to obtain at this critical moment some of the basic and factual information which he will require in order to understand the major problem this country faces."

To compress the basic geographic, ethnographic, economic, and historical (1914–1944) data and outline the stakes in the peace for eighty countries in an average of about four and a half pages to the country is no easy assignment. Any expert in the subject matter of the several topics covered for each country will find omissions or inclusions which he would not make. But this book is not an offering to the experts so the degree of success should be measured in terms of the reasonableness of the presentation for those who either have not had the opportunities of specialized study in foreign affairs or who have let their college-gained knowledge become hazy and so need a

refresher courses

To one who approached the subject of world politics from the economics and geography side of the campus, the historical presentation appears to be stressed more than the land, the people, and the economics of the country, but is must be admitted that the history of the past thirty years, with all its movement and dramatic leaders, is to most people a more fascinating route to knowledge than the facts on the earth, its races and economics. The fifty maps included are newspaper maps. They are not a concession to political geographers who would have used more elaborate material but they are simplified and easily understood pictures among the best of their kind.

The Guide to the Peace is not scholarly; it is not documented; it is not

exhaustive; it is not the last word and Mr. Welles makes no such claims for it. It should, however, be an effective guide and stabilizer when one is considering radio broadcasts, and newspaper, and magazine statements on world politics. The authors and the editor should be especially commended for the reportorial style that not only makes for easy reading but tempts one to read further. This contribution of Mr. Welles toward an enlightened citizenry merits serious consideration.

JOHN W. FREY

Washington

Re-Educating Germany. By Werner Richter. Chicago: University of Chicago Press; 1945. Pp. xxvi, 227. Index. \$3.50. Dr. Werner Richter, formerly Under-Secretary in charge of higher education in the Prussian Ministry of Education and at present professor of philosophy at Elmhirst College, Illinois, has undertaken in this book to discuss one of the most perplexing problems that face the post-war world, the reeducation of Germany. In the last sentence of the book Dr. Richter concludes that "The way of purification lies ahead; but it must lead to a European community in which freedom, equality, and brotherhood inspire and control And yet on the same page he pleads for a better understanding of "a nation that for twelve hundred years of cultural tradition has enriched the world" and is inclined to forget that the same nation has brought destruction to the world and herself by surrendering that tradition for the past hundred years. "I myself," he writes, "learned Bernhardi's name for the first time during the war and from the foreign press"; perhaps this may be accounted for by the fact that the Bernhardi and other similar ideas had become so ingrained in German mentality that their origin was never questioned. The purification that Dr. Richter hopes for must be of a mentality which both antedated and paved the way for Hitlerism, and to which he himself refers as "The Germany of arms and aggression, dreaming of a racial superhumanity."

Because the Germans have proved their political incompetence Dr. Richter urges that her rebirth must be through the development of a new cultural outlook within a European cultural ideal. To this end he recommends "the establishment of a new and independent body, a kind of world church, analogous to the World Council of Churches, the creation of a European cultural conscience with its own responsibility for the development of a European sense of culture and community and with sufficient authority to carry out its work." It is extremely difficult to understand what this means, since the author rejects the idea of "foreign teachers" (and presumably foreign teaching) for the reëducation of Germany. The idea of an authority to undertake the creation and molding of culture is somewhat unrealistic. The explanation of the recommendation is found elsewhere in the book. German culture is to be saved as a part of the European sense of culture, for "a complete annihilation of Germany would, as we have said, bring Russia to the Rhine. . . . If Russia were to join hands with the West over the corpse of Germany, the joy in this achievement would be certain to cool with each succeeding month; for the vacuum created thereby could only

increase the possibilities of friction."

Such an argument is much too naïve and has been used by others who can hardly be claimed to have the warm sympathy for rebuilding Germany on the basis of the new ideal for German education discussed by Dr. Richter:

That rebuilding must come from within Germany and, since Dr. Richter's assertion that Nazism has not commanded the loyal support of all Germans is not supported by any evidence, the time for that rebuilding has not yet arrived. "School reforms," says Dr. Richter, "are always the expression of the aspirations of an epoch; they manifest a dissent from the past, from what seems to have outlived itself, and a confidence in a better future." When that confidence will be restored depends upon so many imponderables that discussion of the reëducation of Germany must remain an interesting academic speculation, such as Dr. Richter has presented.

I. L. KANDEL

Teachers College Columbia University

The Real Soviet Russia. By David J. Dallin. Translated by Joseph Shaplen. New Haven: Yale University Press, 1944. Pp. 256. \$3.50. In his analysis of "The Real Soviet Russia" Mr. Dallin concludes that "the whole world will be grateful to Russia for her help and her sacrifices in this war. But the Russia of the future will have no reason to be thankful to the Soviet Government of to-day for its specific methods of waging war and for its war-

time foreign policy" (p. 249).

Unlike the author's preceding works, "Soviet Russia's Foreign Policy, 1939–1942" and "Russia and Post-War Europe," this book is less detached and not so meticulously documented. To be sure, Chapters VI, VII, and VIII, dealing with the new social structure and the new upper classes and their impact on the domestic economy and Russia's foreign policy are revealing and significant, but not entirely convincing. The latter is probably due to the fact that the author does not cite specifically the sources whence come his facts and figures; hence the cogency of the arguments and his keen analy-

sis suffer correspondingly.

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Likewise the chapter on "Forced Labor" is perhaps the most startling part According to Mr. Dallin the class of forced labor is as essential to Soviet economy as are the free workers, collectivized peasants, and state employees. "Without the armies of forced labor the state economy could not have attained the effectiveness which it had reached at the beginning of the war. Without them the army could not have been supplied. The socialeconomic system cannot exist without forced labor" (p. 202). It is difficult to accept at face value such conclusions because the author does not authenticate his sources of information. Conversely one cannot challenge the veracity of his facts and figures since the author is generally regarded as a genuine historian whose intellectual integrity is beyond reproach. chapter is replete with quotations from escaped political prisoners to the effect that the number of inmates in Soviet concentration camps approximates fifteen million, if not more. The author assures the reader that "material at our disposal makes it possible to draw a picture of the conditions under which the class of forced labor lives. . . . The penal labor camps are places of the greatest moral degradation: prostitution, thievery, swindles mark this struggle for existence" (p. 208).

In this book Mr. Dallin has tried to show the workings of the purge action of the government, of the secret police, of the Army, of the Party within the Party of peasants and workers; all of which presents a picture different from that ordinarily presented to the outside world. Yes, a great deal has changed in Russia during the past quarter of a century. But the Govern-

ment has never abandoned the two basic principles: state economy and the strong totalitarian political regime. Moreover, the author hastens to say that Russia's misfortune consists in the firmness with which these two principles have been retained, in the lack of realism and refusal to compromise in

this respect.

In the introductory chapter entitled "Klyukva" (a cranberry plant used in the manufacture of a popular beverage) the author illustrates quite effectively the kind of ridiculous misinformation about the Soviet Union that has gained currency in high political and journalistic circles in the United States. And, as far as Soviet-American relations are concerned, Mr. Dallin contends that in Russia foreign and internal policies are more closely allied than in any other country. Only by studying the general concepts dominating Soviet activity at home, the established social relations, and the direction of internal political development, is it possible to comprehend and to foresee the evolution of Soviet foreign policy and to avoid the naïve and dangerous mistakes so frequent during the past decade.

mistakes so frequent during the past decade.

Similarly the "Internationale" ("Arise, ye prisoners of starvation") was abolished as the official anthem in favor of the new neutral national hymn ("Great Russia has cemented forever the inviolate union of free republics.

... We will lead the Fatherland to glory"). But the old anthem was reserved expressis verbis for use by the party. Both anthems are used. One contained the seeds of nationalism, the other the traditions of Communism. Both anthems live peacefully side by side, but not without secret hostility. Hence the author issues a warning that both anthems are prepar-

ing for the moment when they will enter into open conflict.

CHARLES PRINCE

Washington .

The Ukraine: A Submerged Nation. By William Henry Chamberlin. New York: Macmillan; 1944. Pp. viii, 91. Index. \$1.75. Mr. Chamberlin's latest volume is a succinct and eminently readable account of the historical vicissitudes of the Ukrainians, "the most numerous people in Europe without a sovereign organization." Within the restricted space of seven brief chapters Mr. Chamberlin succeeds in unfolding a telling picture of the political, social, economic, and cultural evolution of Ukraine from the earliest days to 1944. The author is fully familiar with Ukrainian history and displays keen insight into the mind and tradition of the unhappy borderland over the possession of which its two stronger Slavic neighbors—Russia and Poland—had fought for centuries. Mr. Chamberlin is a partisan of neither Russia nor Poland. He points out that the Soviet Government, reversing the policy of its predecessor, proclaimed the principle of racial and cultural equality for the peoples of the U.S.S.R. but at the same time denied them all political or economic freedom. "It may . . . be affirmed with reasonable certainty," writes Mr. Chamberlin, "that far more Ukrainians suffered for political reasons under the Soviet rule than under the Tsarist régime." Poland, on the other hand, proceeded to stamp out all traces of Ukrainian nationalism. The author believes, nevertheless, that there was at no time in the Polish Ukraine "a catastrophe comparable with the famine in Soviet Ukraine in 1932-33. Nor did the Polish 'pacification' of the Ukrainian regions, brutal and revolting as it was, break up and destroy so many human existences as the liquidation of the kulaks on the other side of the border." Mr. Chamberlin sees little hope for the Ukraine unless

genuine democracy is established in the Soviet Union. "What are the future prospects for Ukrainian freedom?" he asks. "This question is closely bound up with a larger issue: whether the evolution in that part of the world will be toward liberty, self-determination, and peace, or whether a despotic militarist dictatorship, with power centered in Moscow, will prove in the future as great a danger to the freedom of small nations and to the peace and stability of Europe as Nazi Germany was in the past."

MICHAEL T. FLORINSKY

Columbia University

China among the Powers. By David Nelson Rowe. New York: Harcourt, Brace, 1945. Pp. x, 205. Maps. Index. \$2.00. The third paragraph of this work classifies China as "one of the Great Powers," to which statement many will take exception and to which the author himself makes exception on page 19, acknowledging "the absolute necessity for foreign aid in finally freeing her territories" and on page 20 by stating that "militarily she cannot at present by any definition be termed a "Great Power." There is little that is new in this small volume; its contribution consists of compactness and compression of material into chapters on "Manpower," "Military Power," "Agriculture," "Problems of Industrial Development," "Raw Materials," "Transport and Communications," "Government and Social Organization," and "Organization of Peace in the Far East."

It is stated that China sacrificed her best troops at Shanghai in 1932, continues to be inadequately equipped, and prefers defensive to offensive tactics. Among her handicaps is lack of discipline in life, which also impairs Chinese capacity for mechanical training to supplant handicraft and individualism in production. The need to break down the prejudice against working with the hands which generally arises among those receiving advanced training is suggested. Organization for long-range peace in the Orient as proposed strangely omits any reference to the basic need for the channeling of Japanese thinking in new directions, without which none of the more superficial reme-

dies can be effective.

The book is well written, in clear and penetrating style, from a wide range of consulted material cited in footnotes (which would be more conveniently "footed" on each page instead of collected at the end of the book). Generally sound conclusions are supported by well-chosen factual illustrations and examples.

W. LEON GODSHALL

Miami University

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^{*} Mention here neither assures nor precludes review later.

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WILBUR S. FINCH

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CZECHOSLOVAKIA—SOVIET UNION

TREATY OF FRIENDSHIP AND MUTUAL COLLABORATION *

December 12, 1943

Treaty on Friendship, Mutual Assistance and Postwar Collaboration Between the Union of Soviet Socialist Republics and the Czechoslovak Republic.

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics and the President of the Czechoslovak Republic, desiring to modify and supplement the Treaty on Mutual Assistance existing between the Union of Soviet Socialist Republics and the Czechoslovak Republic and signed in Prague on May 16, 1935, confirm the provisions of the Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the Czechoslovak Republic on Joint Actions in War Against Germany signed in London on July 18, 1941, desiring to assist after the war in the maintenance of peace and in averting further aggression on the part of Germany and to insure continuous friendship and peaceful collaboration between themselves after the war, have decided to conclude a treaty with this purpose and appointed as their Plenipotentiaries:

For the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics—Vyacheslav Mikhailovich Molotov, People's Commissar of Foreign Affairs; for the President of the Czechoslovak Republic—Zdenek Firlinger, the Ambassador of the Czechoslovak Republic in the Soviet Union, who upon the exchange of their credentials found in due form and good order have agreed upon the following:

ARTICLE I

The high contracting parties, having mutually agreed to unite in the policy of continuous friendship and friendly collaboration after the war as well as of mutual assistance, undertake to render each other military and other assistance and support of all kind in the present war against Germany and all those states which are associated with her in acts of aggression in Europe.

ARTICLE II

The high contracting parties undertake not to enter in the course of the present war into any negotiations with the Hitler government or with any other government in Germany which does not clearly renounce all aggressive intentions, and not to negotiate or conclude without mutual consent any armistice or peace treaty with Germany or with any other state associated with her in acts of aggression in Europe.

* For British-Soviet Treaty of Alliance see this JOURNAL, Vol. 36 (1942), Supplement, p. 216.

ARTICLE III

Confirming their prewar policy of peace and mutual assistance expressed in their treaty signed in Prague on May 16, 1935, the high contracting parties undertake that, in the event one of them finds itself in the postwar period involved in hostilities with Germany which would resume her "Erang nach Osten" policy, or with any other state which would unite with Germany directly or in any other form in such a war, the other high contracting party will immediately render the contracting party thus involved in hostilities every military and other support and assistance within its disposal.

ARTICLE IV

The high contracting parties, considering the interests of security of each of them, agree to maintain close and friendly collaboration in the period after the reëstablishment of peace and to act in conformity with the principles of mutual respect for their independence and sovereignty, as well as for non-intervention in internal affairs of the other State. They agree to develop their economic relations on the widest possible scale and to render each other every possible economic assistance after the war.

ARTICLE V

Each of the high contracting parties undertakes not to conclude any alliance and not to take part in any coalition directed against the other high contracting party.

ARTICLE VI

The present treaty comes into force immediately upon being signed and is subject to ratification within the shortest possible time; the exchange of the instruments of ratification shall be effected in Moscow as soon as possible. The present treaty shall remain in force for twenty years from its signature and, if at the end of the said period of twenty years one of the high contracting parties does not declare, twelve months prior to the expiration of the term, its desire to renounce the treaty, it shall remain in force for the next five years, and thus each time until one of the high contracting parties, twelve months prior to the expiration of the current five-year term, presents notice in writing of its intention to discontinue its operation. In testimony whereof the Plenipotentiaries have signed this treaty and have affixed their seals thereto. Made in two copies, each in the Russian and the Czechoslovak languages. Both texts have equal force.

Moscow, December 12, 1943.

(Signed) On authorization of the Presidium of the Supreme Soviet of the U.S.S.R.

Molotov

On authorization of the President of the Czechoslovak Republic

FIRLINGER

Protocol to the Treaty on Friendship, Mutual Assistance and Postwar Collaboration Between the Union of Soviet Socialist Republics and the Czechoslovak Republic concluded on December 12, 1943.

In concluding the treaty on friendship, mutual assistance and postwar collaboration between the Union of Soviet Socialist Republics and the Czechoslovak Republic, the contracting parties have agreed that, in the event of some third country which borders on the Union of Soviet Socialist Republics or on the Czechoslovak Republic and which formed the object of German aggression in the present war, desires to join this treaty she will be accorded the possibility, on the mutual consent of the Governments of the Union of Soviet Socialist Republics and of the Czechoslovak Republic, of signing this treaty which will thus acquire the quality of a tripartite treaty. The present protocol has been made in two copies, each in the Russian and the Czechoslovak languages. Both texts have equal force.

Moscow, December 12, 1943.

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(Signed) On authorization of the Presidium of the Supreme Soviet of the U.S.S.R.

Molotov
On authorization of the President of the Czechoslovak Republic

FIRLINGER

FRANCE—SOVIET UNION TREATY OF ALLIANCE AND MUTUAL ASSISTANCE

December 10, 1944

Treaty of Alliance and Mutual Assistance Between the U.S.S.R. and the French Republic.

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics and the Provisional Government of the French Republic, determined to prosecute jointly and to the end the war against Germany, convinced that once victory is achieved, the reëstablishment of peace on a stable basis and its prolonged maintenance in the future will be conditioned upon the existence of close collaboration between them and with all the United Nations; having resolved to collaborate in the cause of the creation of an international system of security for the effective maintenance of general peace and for insuring the harmonious development of relations between nations; desirous of confirming the mutual obligations resulting from the exchange of letters of September 20, 1941, concerning joint actions in the war against Germany; convinced that the conclusion of an alliance between the U.S.S.R. and France corresponds to the sentiments and interests of both peoples, the demands of war, and the requirements of peace and economic

reconstruction in full conformity with the aims which the United Nations have set themselves, have decided to conclude a Treaty to this effect and appointed as their plenipotentiaries:

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics—Vyacheslav Mikhailovich Molotov, People's Commissar of Foreign Affairs of the U.S.S.R.;

The Provisional Government of the French Republic—Georges Bidault, Minister of Foreign Affairs;

Who after exchange of their credentials, found in due form, agreed upon the following:

ARTICLE I

Each of the high contracting parties shall continue the struggle on the side of the other party and on the side of the United Nations until final victory over Germany. Each of the high contracting parties undertakes to render the other party aid and assistance in this struggle with all the means at its disposal.

ARTICLE II

The high contracting parties shall not agree to enter into separate negotiations with Germany or to conclude without mutual consent any armistice or peace treaty either with the Hitler government or with any other government or authority set up in Germany for the purpose of the continuation or support of the policy of German aggression.

ARTICLE III

The high contracting parties undertake also, after the termination of the present war with Germany, to take jointly all necessary measures for the elimination of any new threat coming from Germany, and to obstruct such actions as would make possible any new attempt at aggression on her part.

ARTICLE IV

In the event either of the high contracting parties finds itself involved in military operations against Germany, whether as a result of aggression committed by the latter or as a result of the operation of the above Article III, the other party shall at once render it every aid and assistance within its power.

ARTICLE V

The high contracting parties undertake not to conclude any alliance and not to take part in any coalition directed against either of the high contracting parties.

ARTICLE VI

The high contracting parties agree to render each other every possible economic assistance after the war, with a view to facilitating and accelerating

reconstruction of both countries, and in order to contribute to the cause of world prosperity.

ARTICLE VII

The present treaty does not in any way affect obligations undertaken previously by the high contracting parties in regard to third states in virtue of published treaties.

ARTICLE VIII

The present treaty, whose Russian and French texts are equally valid, shall be ratified and ratification instruments shall be exchanged in Paris as early as possible. It comes into force from the moment of the exchange of ratification instruments and shall be valid for 20 years. If the treaty is not denounced by either of the high contracting parties at least one year before the expiration of this term, it shall remain valid for an unlimited time; each of the contracting parties will be able to terminate its operation by giving notice to that effect one year in advance.

In confirmation of which, the above plenipotentiaries signed the present treaty and affixed their seals to it.

Done in Moscow in two copies, December 10, 1944.

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On the authorization of the Presidium of the Supreme Soviet of the U.S.S.R.

MOLOTOV

On the authorization of the Provisional Government of the French Republic.

BIDAULT

FINLAND — SOVIET UNION

ARMISTICE:

September 19, 1944

Whereas the Finnish Government has accepted the preliminary condition of the Soviet Government regarding a break with Germany and the removal of German troops from Finland, and whereas the conclusion of the future treaty of peace will be facilitated by the inclusion in an armistice agreement of certain conditions of this peace treaty, the Government of the Union of Soviet Socialist Republics and his Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, acting on behalf of all the United Nations at war with Finland, on the one hand, and the Government of Finland on the other hand, have decided to conclude the present agreement for an armistice, the execution of which will be controlled by the Soviet High Command, similarly acting on behalf of the United Nations at war with Finland, hereinafter named the Allied (Soviet) High Command.

On the basis of the foregoing, the representative of the Allied (Soviet)

¹ The Times, London, September 21, 1944; see also the Moscow News of same date.

High Command, Colonel-General A. A. Zhdanov, and the representatives of the Government of Finland, M. Carl Enckell, Minister of Foreign Affairs, General Rudolf Walden, Minister of Defence, General Erik Heinrichs, Chief of the General Staff, and Lieutenant-General Oscar Enckell, duly authorized thereto, have signed the following conditions:

Article 1. In connection with the cessation of military activities on the part of Finland on September 4, 1944, and on the part of the Soviet Union on September 5, 1944, Finland undertakes to withdraw her troops behind the line of the Soviet-Finnish frontier of 1940.

Article 2. Finland undertakes to disarm German land, naval, and air armed forces which have remained in Finland since September 15, 1944, and to hand over their personnel to the Allied (Soviet) High Command as prisoners of war, in which task the Soviet Government will assist the Finnish Army. The Finnish Government also accept the obligation to intern German and Hungarian nationals in Finnish territory.

Article 3. Finland undertakes to make available at the request of the Allied (Soviet) High Command the airfields on the southern and south-western coast of Finland, with all equipment, to serve as bases for Soviet aircraft during the period necessary for air operations against German forces in Estonia and against the German Navy in the northern part of the Baltic Sea.

Article 4. Finland undertakes to place her army on a peace footing within two and a half months from the day of the signing of the present agreement.

Article 5. Finland, having broken off all relations with Germany, also undertakes to break off all relations with Germany's satellite States.

Article 6. The effect of the peace treaty between the Soviet Union and Finland concluded in Moscow on March 12, 1940, is restored, subject to the changes which follow from the present agreement.

Article 7. Finland returns to the Soviet Union the Oblast of Petsamo (Pechenga) voluntarily ceded to Finland by the Soviet State in accordance with the peace treaties of October 14, 1920, and March 12, 1940.

Article 8. The Soviet Union renounces its rights to the lease of the peninsula of Hangö accorded to it by the Soviet-Finnish peace treaty of March 12, 1940, and Finland, for her part, undertakes to make available to the Soviet Union on lease territory and waters for the establishment of a Soviet naval base in the area of Porkala-Ud.

Article 9. The effect of the agreement concerning the Aaland Islands concluded between the Soviet Union and Finland on October 11, 1940, is completely restored.

Article 10. Finland undertakes immediately to transfer to the Allied (Soviet) High Command, to be returned to their homeland, all Soviet and allied prisoners of war now in her power and also Soviet and allied nationals who have been interned in or deported by force to Finland. From the moment of signing the present agreement and up to the time of repatriation

Finland undertakes to provide at her cost for all Soviet and allied prisoners of war and also nationals who have been deported by force and also interned, adequate food, clothing, and medical service in accordance with hygienic requirements, and also with means of transport for their return to their homeland. At the same time Finnish prisoners of war and interned persons now located on the territory of allied States will be transferred to Finland.

Article 11. Losses caused by Finland to the Soviet Union by military operations and occupation of Soviet territory will be indemnified by Finland to the Soviet Union to the amount of \$300,000,000, payable over six years in commodities (timber products, paper, cellulose, sea-going and river craft, sundry machinery). Provision will also be made for the indemnification in the future by Finland of losses caused during the war to the property of other allied States and their nationals in Finland, the amount of compensation to be fixed separately.

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Article 12. Finland undertakes to restore all legal rights and interests of the United Nations and their nationals located in Einnish territory as they existed before the war and to return their property in complete good order.

Article 13. Finland undertakes to collaborate with the allied Powers in the apprehension of persons accused of war crimes and in their trial.

Article 14. Finland undertakes, within the periods fixed by the Allied (Soviet) High Command, to return to the Soviet Union in complete good order all valuables and materials removed from Soviet territory to Finland during the war belonging to the State, public and coöperative organizations, factories, institutions, or individual citizens, such as equipment for factories and works, locomotives, railway carriages, ships, tractors, motor-vehicles, historical monuments, valuables from museums, and all other property. Article 15. Finland undertakes to transfer as booty, to the disposition of the Allied (Soviet) High Command, all war materials of Germany and her satellites located on Finnish territory, including naval and other ships belonging to these countries in Finnish waters.

Article 16. Finland undertakes not to permit the export or expropriation of any form of property (including valuables and currency) belonging to Germany or Hungary or to their nationals, or to persons resident in their territories, or in territories occupied by them, without the permission of the Allied (Soviet) High Command.

Article 17. Finnish merchant ships other than those already under allied control shall be placed under the control of the Allied (Soviet) High Command for their use in the general interests of the allies.

Article 18. Finland undertakes to transfer to the Allied (Soviet) High Command all ships in Finnish ports belonging to the United Nations (no matter at whose disposal these vessels may be) for the use of the Allied (Soviet) High Command for the duration of the war against Germany in the general interests of the allies, these vessels subsequently to be returned to their owners.

Article 19. Finland will make available such materials and products as may be required by the United Nations for purposes connected with the war.

Article 20. Finland undertakes immediately to release all persons, irrespective of citizenship or nationality, held in prison on account of their activities in favour of the United Nations or because of their sympathies with the cause of the United Nations, or in view of their racial origin, and will also remove all discriminatory legislation and disabilities arising therefrom.

Article 21. Finland undertakes immediately to dissolve all pro-Hitler organizations (of a Fascist type) situated in Finnish territory, whether political, military, or para-military, as well as other organizations conducting propaganda hostile to the United Nations, in particular to the Soviet Union, and will not in future permit the existence of organizations of that nature.

Article 22. An allied control commission will be established which, until the conclusion of peace with Finland, will undertake the regulation and the control of the execution of the present agreement under the general direction and instructions of the Allied (Soviet) High Command acting on behalf of the allied Powers.

Article 23. The present agreement comes into force as from the moment of signature.

Done in Moscow on the 19th day of September, 1944, in one copy, which will be entrusted to the safekeeping of the Government of the U.S.S.R. in the Russian, English, and Finnish languages, the Russian and English texts being authentic.

UNITED STATES—GREAT BRITAIN—SOVIET UNION

ARMISTICE WITH RUMANIA 1

September 12, 1944

Agreement Between the Governments of the United States of America, the Soviet Union, and the United Kingdom on the One Hand, and the Government of Rumania on the Other Concerning an Armistice.

The Government and High Command of Rumania, recognizing the fact of the defeat of Rumania in the war against the Union of Soviet Socialist Republics, the United States of America, and the United Kingdom, and the other United Nations, accept the armistice terms presented by the Governments of the above mentioned three Allied Powers, acting in the interest of all the United Nations.

On the basis of the foregoing the representative of the Allied (Soviet) High Command, Marshal of the Soviet Union, R. Y. Malinovski, duly authorized thereto by the Governments of the United States of America, the Soviet Union, and the United Kingdom, acting in the interests of all the

¹ Department of State Bulletin, Vol. XI, No. 273 (September 17, 1944), p. 289.

United Nations, on the one hand, and the representatives of the Government and High Command of Rumania, Minister of State and Minister of Justice L. Patrascanu, Deputy Minister of Internal Affairs, Adjutant of His Majesty the King of Rumania, General D. Damaceanu, Prince Stirbey, and Mr. G. Popp, on the other hand, holding proper full powers, have signed the following conditions:

1. As from August 24, 1944, at four a.m., Rumania has entirely discontinued military operations against the Union of Soviet Socialist Republics on all theaters of war, has withdrawn from the war against the United Nations, has broken off relations with Germany and her satellites, has entered the war and will wage war on the side of the Allied Powers against Germany and hungary for the purpose of restoring Rumanian independence and sovereignty, for which purpose she provides not less than twelve infantry divisions with corps troops.

Military operations on the part of Rumanian armed forces, including naval and air forces, against Germany and Hungary will be conducted under the general leadership of the Allied (Soviet) High Command.

- 2. The Government and High Command of Rumania undertake to take steps for the disarming and interning of the armed forces of Germany and Hungary on Rumanian territory and also for the interning of the citizens of both states mentioned who reside there. (See Annex to Article Two.)
- 3. The Government and High Command of Rumania will ensure to the Soviet and other Allied forces facilities for free movement on Rumanian territory in any direction if required by the military situation, the Rumanian Government and High Command of Rumania giving such movement every possible assistance with their own means of communications and at their own expense on land, on water and in the air. (See Annex to Article Three.)
- 4. The state frontier between the Union of Soviet Socialist Republics and Rumania, established by the Soviet-Rumanian Agreement of June 8, 1940, is restored.
- 5. The Government and High Command of Rumania will immediately hand over all Soviet and Allied prisoners of war in their hands, as well as interned citizens and citizens forcibly removed to Rumania, to the Allied (Soviet) High Command for the return of these persons to their own country.

From the moment of the signing of the present terms and until repatriation the Rumanian Government and High Command undertake to provide at their own expense all Soviet and Allied prisoners of war, as well as forcibly removed and interned citizens, and displaced persons and refugees, with adequate food, clothing and medical service, in accordance with hygienic requirements, as well as with means of transport for the return of all those persons to their own country.

6. The Rumanian Government will immediately set free, irrespective of citizenship and nationality, all persons held in confinement on account of their activities in favor of the United Nations or because of their sympathies

with the cause of the United Nations, or because of their racial origin, and will repeal all discriminatory legislation and restrictions imposed thereunder.

- 7. The Rumanian Government and High Command undertake to hand over as trophies into the hands of the Allied (Soviet) High Command all war material of Germany and her satellites located on Rumanian territory, including vessels of the fleet of Germany and her satellites located in Rumanian waters.
- 8. The Rumanian Government and High Command undertake not to permit the export or expropriation of any form of property (including valuables and currency) belonging to Germany, Hungary or to their nationals or to persons resident in their territories or in territories occupied by them without the permission of the Allied (Soviet) High Command. They will keep this property in such manner as may be prescribed by the Allied (Soviet) High Command.
- 9. The Rumanian Government and High Command undertake to hand over to the Allied (Soviet) High Command all vessels belonging or having belonged to the United Nations which are located in Rumanian ports, no matter at whose disposal these vessels may be, for the use of the Allied (Soviet) High Command during the period of the war against Germany and Hungary in the general interests of the Allies, these vessels subsequently to be returned to their owners.

The Rumanian Government bear the full material responsibility for any damage or destruction of the aforementioned property until the moment of the transfer of this property to the Allied (Soviet) High Command.

10. The Rumanian Government must make regular payments in Rumanian currency required by the Allied (Soviet) High Command for the fulfillment of its functions and will in case of need ensure the use on Rumanian territory of industrial and transportation enterprises, means of communication, power stations, enterprises and installations of public utility, stores of fuel, fuel oil, food and other materials, and services in accordance with instructions issued by the Allied (Soviet) High Command.

Rumanian merchant vessels, whether in Rumanian or foreign waters, shall be subject to the operational control of the Allied (Soviet) High Command for the use in the general interest of the Allies. (See Annex to Article Ten.)

11. Losses caused to the Soviet Union by military operations and by the occupation by Rumania of Soviet territory will be made good by Rumania to the Soviet Union, but, taking into consideration that Rumania has not only withdrawn from the war, but has declared war and in fact is waging war against Germany and Hungary, the parties agree that compensation for the indicated losses will be made by Rumania not in full but only in part, namely to the amount of three hundred million United States dollars payable over six years in commodities (oil products, grain, timber products, seagoing and river craft, sundry machinery, et cetera).

Compensation will be paid by Rumania for losses caused to the property of other Allied states and their nationals in Rumania during the war, the amount of compensation to be fixed at a later date. (See Annex to Article Eleven.)

- 12. The Rumanian Government undertakes within the periods indicated by the Allied (Soviet) High Command to return to the Soviet Union in compléte good order all valuables and materials removed from its territory during the war, belonging to state, public and coöperative organizations, enterprises, institutions or individual citizens, such as: factory and works equipment, locomotives, railway trucks, tractors, motor vehicles, historic monuments, museum valuables and any other property.
- 13. The Rumanian Government undertakes to restore all legal rights and interests of the United Nations and their nationals on Rumanian territory as they existed before the war and to return their property in complete good order.
- 14. The Rumanian Government and High Command undertake to collaborate with the Allied (Soviet) High Command in the apprehension and trial of persons accused of war crimes.
- 15. The Rumanian Government undertakes immediately to dissolve all pro-Hitler organizations (of a Fascist type) situated in Rumanian territory, whether political, military or para-military, as well as other organizations conducting propaganda hostile to the United Nations, in particular to the Soviet Union, and will not in future permit the existence of organizations of that nature.

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- 16. The printing, importation and distribution in Rumania of periodical and non-periodical literature, the presentation of theatrical performances and films, the work of wireless stations, post, telegraph and telephone shall be carried out in agreement, with the Allied (Soviet) High Command. (See Annex to Article Sixteen.)
- 17. Rumanian Civil Administration is restored in the whole area of Rumania separated by not less than fifty-one hundred kilometers (depending upon conditions of terrain) from the front line, Rumanian administrative bodies undertaking to carry out, in the interests of the reëstablishment of peace and security, instructions and orders of the Allied (Soviet) High Command issued by them for the purpose of securing the execution of these armistice terms.
- 18. An Allied Control Commission will be established which will undertake until the conclusion of peace the regulation of and control over the execution of the present terms under the general direction and orders of the Allied (Soviet High Command, acting on behalf of the Allied Powers. (See Annex to Article 18.)
- 19. The Allied Governments regard the decision of the Vienna award regarding Transylvania as null and void and are agreed that Transylvania (or the greater part thereof) should be returned to Rumania, subject to

confirmation at the peace settlement, and the Soviet Government agrees that Soviet forces shall take part for this purpose in joint military operations with Rumania against Germany and Hungary.

20. The present terms come into force at the moment of their signing.

Done in Moscow, in four copies, each in the Russian, English and Rumanian languages, the Russian and English texts being authentic. September 12, 1944.

By authority of the Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom.

By authority of the Government and High Command of Rumania.

Annex to the Armistice Agreement between the Governments of the United States of America, the Soviet Union, and the United Kingdom on the one hand and the Government of Rumania on the other hand.

A. Annex to Article 2.

The measures provided for in Article 2 of the agreement regarding the internment of citizens of Germany and Hungary now in Rumanian territory do not extend to citizens of those countries of Jewish origin.

B. Annex to Article 3.

Under coöperation of the Rumanian Government and High Command of Rumania, mentioned in Article 3 of the Agreement, is understood the placing at the disposal of the Allied (Soviet) High Command for use at its discretion during the armistice all Rumanian military, air and naval constructions and installations, ports, harbors, barracks, warehouses, airfields, means of communication, meterological stations which might be required for military needs in complete good order and with the personnel required for their maintenance.

C. Annex to Article 10.

The Rumanian Government will withdraw and redeem within such time limits and on such terms as the Allied (Soviet) High Command may specify, all holdings in Rumanian territory of currencies issued by the Allied (Soviet) High Command, and will hand over currency so withdrawn free of cost to the Allied (Soviet) High Command.

D. Annex to Article 11.

The basis for settlements of payment of compensation provided for in Article 11 of the present Agreement will be the American dollar at its gold parity on the day of signing of the Agreement, i.e. thirty-five dollars for one ounce of gold.

E. Annex to Article 16.

The Rumanian Government undertakes that wireless communication, telegraphic and postal correspondence, correspondence in cypher and courier correspondence, as well as telephonic communication with foreign

countries of Embassies, Legations and Consulates situated in Rumania, will be conducted in the manner laid down by the Allied (Soviet) High Command.

F. Annex to Article 18.

Control over the exact execution of the armistice terms is entrusted to the Allied Control Commission to be established in conformity with Article 18 of the Armistice Agreement.

The Rumanian Government and their organs shall fulfill all instructions of the Allied Control commission arising out of the Armistice Agreement.

The Allied Control Commission will set up special organs or sections entrusting them respectively with the execution of various functions. In addition, the Allied Control Commission may have its officers in various parts of Rumania.

The Allied Control Commission will have its seat in the City of Bucharest.

Moscow: September 12, 1944.

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ARMISTICE WITH BULGARIA

October 28, 1944

- Agreement Between the Governments of the United States of America, the United Kingdom, and the Union of Soviet Socialist Republics, on the One Hand, and the Government of Bulgaria, on the Other Hand, Concerning an Armistice.

The Government of Bulgaria accepts the armistice terms presented by the Government of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom acting on behalf of all the United Nations at war with Bulgaria.

Accordingly the representative of the Supreme Allied Commander in the Mediterranean, Lieutenant General Sir James Gammell, and the representative of the Soviet High Command, Marshal of the Soviet Union, F. I. Tolbukhin, duly authorized thereto by the governments of the United States of America, the Union of the Soviet Socialist Republics and the United Kingdom acting on behalf of all the United Nations at war with Bulgaria, on the one hand, and representatives of the Government of Bulgaria, Mr. P. Stainov, Minister of Foreign Affairs, Mr. D. Terpeshev, Minister Without Portfolio, Mr. N. Petkov, Minister Without Portfolio and Mr. P. Stoyanov, Minister of Finance, furnished with due powers, on the other hand, have signed the following terms:

ARTICLE ONE. (A) Bulgaria having ceased hostilities with the Union of Soviet Socialist Republics on September 9, and severed relations with Ger-

¹ Department of State Bulletin, Vol. XI, No. 279 (October 29, 1944), p. 492.

many on September 6, and with Hungary on September 26, hostilities has ceased against all the other United Nations.

- (B) The Government of Bulgaria undertakes to disarm the German armed forces in Bulgaria and hand them over as prisoners of war. 'The Government of Bulgaria also undertakes to intern nationals of Germany and her satellites.
- (C) The Government of Bulgaria undertakes to maintain and make available such land, sea and air forces as may be specified for service under the general direction of the Allied (Soviet) High Command. Such forces must not be used on Allied territory except with the prior consent of the Allied Government concerned.
- (D) On the conclusion of hostilities against Germany the Bulgarian armed forces must be demobilized and put on a peace footing under the supervision of the Allied Control Commission.

ARTICLE Two. Bulgarian armed forces and officials must be withdrawn within the specified time limit from the territory of Greece and Yugoslavia in accordance with the pre-condition accepted by the Government of Bulgaria on October 11; the Bulgarian authorities must immediately take steps to withdraw from Greek and Yugoslav territory Bulgarians who were citizens of Bulgaria on January 1, 1941, and to repeal all legislative and administrative provisions relating to the annexation or incorporation in Bulgaria of Greek or Yugoslav territory.

ARTICLE THREE. The Government of Bulgaria will afford to Soviet and other Allied forces freedom of movement over Bulgarian territory in any direction if, in the opinion of the Allied (Soviet) High Command, the military situation so requires, the Government of Bulgaria giving to such movements every assistance with its own means of communication, and at its own expense, by land, water and in the air.

ARTICLE FOUR. The Government of Bulgaria will immediately release all Allied prisoners of war and internees. Pending further instructions, the Government of Bulgaria will at its own expense provide all Allied prisoners of war, internees and displaced persons and refugees, including nationals of Greece and Yugoslavia, with adequate food, clothing, medical services and sanitary and hygienic requirements and also with means of transportation for the return of any such persons to their own country.

ARTICLE FIVE. The Government of Bulgaria will immediately release, regardless of citizenship or nationality, all persons held in confinement in connection with their activities in favor of the United Nations or because of their sympathies with the United Nations cause or for racial or religious reasons, and will repeal all discriminatory legislation and disabilities arising therefrom.

ARTICLE SIX. The Government of Bulgaria will cooperate in the apprehension and trial of persons accused of war crimes.

ARTICLE SEVEN. The Government of Bulgaria undertakes to dissolve immediately all pro-Hitler or other Fascist political, military, para-military

and other organizations on Bulgarian territory conducting propaganda hostile to the United Nations and not to tolerate the existence of such organizations in the future.

ARTICLE EIGHT. The publication, introduction and distribution in Bulgaria of periodical, or non-periodical literature, the presentation of theatrical performances or films, the operation of wireless stations, post, telegraph and telephone services will take place in agreement with the Allied (Soviet) High Command.

ARTICLE NINE. The Government of Bulgaria will restore all property of the United Nations and their nationals, including Greek and Yugoslav property, and will make such reparation for loss and damage caused by the war to the United Nations, including Greece and Yugoslavia, as may be determined later.

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ARTICLE TEN. The Government of Bulgaria will restore all rights and interests of the United Nations and their nationals in Bulgaria.

ARTICLE ELEVEN. The Government of Bulgaria undertakes to return to the Soviet Union, to Greece and Yugoslavia and to the other United Nations, by the dates specified by the Allied Control Commission and in a good state of preservation, all valuables and materials removed during the war by Germany or Bulgaria from United Nations territory and belonging to state, public or cooperative organizations, enterprises, institutions or individual citizens, such as factory and works equipment, locomotives, rolling-stock, tractors, motor vehicles, historic monuments, museum treasures and any other property.

ARTICLE TWELVE. The Government of Bulgaria undertakes to hand over as booty to the Allied (Soviet) High Command all war material of Germany and her satellites located on Bulgarian territory, including vessels of the fleets of Germany and her satellites located in Bulgarian waters.

ARTICLE THIRTEEN. The Government of Bulgaria undertakes not to permit the removal or expropriation of any form of property (including valuables and currency), belonging to Germany or Hungary or to their nationals or to persons resident in their territories or in territories occupied by them, without the permission of the Allied Control Commission. The Government of Bulgaria will safeguard such property in the manner specified by the Allied Control Commission.

ARTICLE FOURTEEN. The Government of Bulgaria undertakes to hand over to the Allied (Soviet) High Command all vessels belonging to the United Nations which are in Bulgarian ports no matter at whose disposal these vessels may be, for the use of the Allied (Soviet) High Command during the war against Germany or Hungary in the common interest of the Allies, the vessels to be returned subsequently to their owners.

The Government of Bulgaria will bear full material responsibility for any damage to or destruction of the aforesaid property up to the moment of its transfer to the Allied (Soviet) High Command.

ARTICLE FIFTEEN. The Government of Bulgaria must make regular payments in Bulgarian currency and must supply goods (fuel, foodstuffs, et cetera), facilities and services as may be required by the Allied (Soviet) High Command for the discharge of its functions.

ARTICLE SIXTEEN. Bulgaria merchant vessels, whether in Bulgarian or foreign waters, shall be subject to the operational control of the Allied (Soviet) High Command for use in the general interest of the Allies.

ARTICLE SEVENTEEN. The Government of Bulgaria will arrange, in case of need, for the utilization in Bulgarian territory of industrial and transport enterprises, means of communication, power stations, public utility enterprises and installations, stocks of fuels and other materials in accordance with instructions issued during the armistice by the Allied (Soviet) High Command.

ARTICLE EIGHTEEN. For the whole period of the armistice there will be established in Bulgaria an Allied Control Commission which will regulate and supervise the execution of the armistice terms under the chairmanship of the representative of the Allied (Soviet) High Command and with the participation of representatives of the United States and the United Kingdom. During the period between the coming into force of the armistice and the conclusion of hostilities against Germany, the Allied Control Commission will be under the general direction of the Allied (Soviet) High Command.

ARTICLE NINETEEN. The present terms will come into force on their signing.

Done at Moscow in quadruplicate, in English, Russian and Bulgarian, the English and Russian texts being authentic.

OCTOBER 28, 1944.

Commander in the Mediterranean.

For the Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom:

Marshal F. I. Tolbukhin, representative of the Soviet High Command.
Lieutenant General James Gammell, representative of the Supreme Allied

For the Government of Bulgaria: P. Stainov, D. Terpeshev, N. Petkov and P. Stoyanov.

Protocol to the Agreement Concerning an Armistice With Bulgaria

At the time of signing the armistice with the Government of Bulgaria, the Allied Governments signatory thereto have agreed to the following:

One. In connection with Article IX it is understood that the Bulgarian Government will immediately make available certain foodstuffs for the relief of the population of Greek and Yugoslav territories which have suffered as a result of Bulgarian aggression. The quantity of each product to be delivered will be determined by agreement between the three governments, and will be considered as part of the reparation by Bulgaria for the loss and damage sustained by Greece and Yugoslavia.

Two. The term "war material" used in Article XII shall be deemed to include all material or equipment belonging to, used by, or intended for use by enemy military or para-military formations or members thereof.

Three. The use by the Allied (Soviet) High Command of Allied vessels handed over by the Government of Bulgaria in accordance with Article XIV of the armistice and the date of their return to their owners will be the subject of discussion and settlement between the Allied Governments concerned and the Government of the Soviet Union.

Four. It is understood that in the application of Article XV the Allied (Soviet) High Command will also arrange for the provision of Bulgarian currency, supplies, services, et cetera, to meet the needs of the representatives of the Governments of the United Kingdom and the United States in Bulgaria.

Done at Moscow in triplicate, in English and Russian languages, both English and Russian texts being authentic.

ARMISTICE WITH HUNGARY

January 20, 1945

Agreement Concerning an Armistice Between the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America on the One Hand and Hungary on the Other.

The Provisional National Government of Hungary, recognizing the fact of the defeat of Hungary in the war against the Soviet Union, the United Kingdom, the United States of America, and other United Nations, accepts the armistice terms presented by the Governments of the above-mentioned three powers, acting on behalf of all the United Nations which are in a state of war with Hungary.

On the basis of the foregoing the representative of the Allied (Soviet) High Command, Marshal of the Soviet Union K. E. Voroshilov, duly authorized thereto by the Governments of the Soviet Union, the United Kingdom, and the United States of America, acting on behalf of all the United Nations which are at war with Hungary, on the one hand and the representatives of the Provisional National Government of Hungary, Minister for Foreign Affairs, Mr. János Gyöngyösi, Colonel General János Vörös, and State Secretary of the Cabinet of Ministers, Mr. István Balogh, on the other, holding proper full powers, have signed the following conditions:

Article I. (A) Hungary has withdrawn from the war against the U.S.S.R. and the other United Nations, including Czechoslovakia, has severed all relations with Germany and has declared war on Germany.

(B) The Government of Hungary undertakes to disarm the German armed forces in Hungary and to hand them over as prisoners of war.

¹ Department of State Bulletin, Vol. XII, No. 291 (January 21, 1945), p. 83.

The Government of Hungary also undertakes to intern nationals of Germany.

- (C) The Government of Hungary undertakes to maintain and make available such land, sea and air forces as may be specified for service under the general direction of the Allied (Soviet) High Command. In this connection Hungary will provide not less than eight infantry divisions with corps troops. These forces must not be used on Allied territory except with the prior consent of the Allied Government concerned.
- (D) On the conclusion of hostilities against Germany, the Hungarian armed forces must be demobilized and put on a peace footing under the supervision of the Allied Control Commission. (See Annex to Article I.)

Article II. Hungary has accepted the obligation to evacuate all Hungarian troops and officials from the territory of Czechoslovakia, Yugoslavia and Rumania occupied by her within the limits of the frontiers of Hungary existing on December 31, 1937, and also to repeal all legislative and administrative provisions relating to the annexation or incorporation into Hungary of Czechoslovak, Yugoslav and Rumanian territory.

Article III. The Government and High Command of Hungary will ensure to the Soviet and other Allied forces facilities for the free movement on Hungarian territory in any direction if, in the opinion of the Allied (Soviet) High Command, the military situation requires this, the Government and High Command of Hungary giving such movement every possible assistance with their own means of communication and at their own expense on land, on the water and in the air. (See Annex to Article III.)

Article IV. The Government of Hungary will immediately release all Allied prisoners of war and internees. Pending further instructions the Government of Hungary will at its own expense provide all Allied prisoners of war and internees, displaced persons and refugees, including nationals of Czechoslovakia and Yugoslavia, with adequate food, clothing, medical services, and sanitary and hygienic requirements, and also with means of transportation for the return of any such persons to their own country.

Article V. The Government of Hungary will immediately release, regardless of citizenship and nationality, all persons held in confinement in connection with their activities in favor of the United Nations or because of their sympathies with the United Nations' cause or for racial or religious reasons, and will repeal all discriminatory legislation and disabilities arising therefrom.

The Government of Hungary will take all the necessary measures to ensure that all displaced persons and refugees within the limits of Hungarian territory, including Jews and stateless persons, are accorded at least the same measure of protection and security as its own nationals.

Article VI. The Government of Hungary undertakes to return to the Soviet Union, and also to Czechoslovakia and Yugoslavia and to the other United Nations, by the dates specified by the Allied Control Commission.

and in complete good order, all valuables and materials removed during the war to Hungary from the United Nations' territory and belonging to state, public or cooperative organizations, enterprises, institutions or individual citizens, such as factory and works equipment, locomotives, rolling stock, tractors, motor vehicles, historic monuments, museum treasures and any other property.

Article VII. The Government and High Command of Hungary undertake to hand over as booty into the hands of the Allied (Soviet) High Command all German war material located on Hungarian territory including vessels of the fleet of Germany.

Article VIII. The Government and High Command of Hungary undertake not to permit, without the authorization of the Allied Control Commission, the export or expropriation of any form of property (including valuables and currency) belonging to Germany or her nationals or to persons resident in German territory or in territories occupied by Germany. They will safeguard such property in the manner specified by the Allied Control Commission.

Article IX. The Government and High Command of Hungary undertake to hand over to the Allied (Soviet) High Command all vessels belonging to or having belonged to the United Nations which are located in Hungarian Danubian ports, no matter at whose disposal these vessels may be, for use during the period of the war against Germany by the Allied (Soviet) High Command in the general interests of the Allies, these vessels subsequently to be returned to their owners.

The Government of Hungary will bear the full material responsibility for any damage or destruction of the aforementioned property until the moment of its transfer to the Allied (Soviet) High Command.

Article X. Hungarian merchant vessels, whether in Hungarian or foreign waters, shall be subject to the operational control of the Allied (Soviet) High Command for use in the general interests of the Allies.

Article XI. The Government of Hungary will make regular payments in Hungarian currency and provide commodities (fuel, foodstuffs, et cetera), facilities and services as may be required by the Allied (Soviet) High Command for the fulfillment of its functions as well as for the needs of missions and representatives of the Allied states connected with the Allied Control Commission.

The Government of Hungary will also assure, in the case of need, the use and regulation of the work of industrial and transport enterprises means of communication, power stations, enterprises and installations of public utility, stores of fuel and other material in accordance with instructions issued during the armistice by the Allied (Soviet) High Command or the Allied Control Commission. (See Annex to Article XI.)

Article XII. Losses caused to the Soviet Union, Czechoslovakia and Yugoslavia by military operations and by the occupation by Hungary of the territories of these states will be made good by Hungary to the Soviet Union, Czechoslovakia and Yugoslavia, but taking into consideration that Hungary has not only withdrawn from the war against the United Nations but has declared war against Germany, the parties agree that compensation for the indicated losses will be made by Hungary not in full but only in part; namely, to the amount of 300,000,000 American dollars payable over six years in commodities (machine equipment, river craft, grain, livestock, et cetera), the sum to be paid to the Soviet Union to amount to 200,000,000 American dollars and the sum to be paid to Czechoslovakia and Yugoslavia to amount to 100,000,000 American dollars.

Compensation will be paid by Hungary for loss and damage caused by the war to other Allied states and their nationals, the amount of compensation to be fixed at a later date. (See Annex to Article XII.)

Article XIII. The Government of Hungary undertakes to restore all legal rights and interests of the United Nations and their nationals on Hungarian territory as they existed before the war and also to return their property in complete good order.

Article XIV. Hungary will cooperate in the apprehension and trial, as well as the surrender to the Governments concerned, of persons accused of war crimes.

Article XV. The Government of Hungary undertakes to dissolve immediately all pro-Hitler or other fascist political, military, para-military and other organizations on Hungarian territory conducting propaganda hostile to the United Nations and not to tolerate the existence of such organizations in the future.

Article XVI. The publication, introduction and distribution in Hungary of periodical or nonperiodical literature, the presentation of theatrical performances or films, the operation of wireless stations, post, telegraph and telephone services will take place in agreement with the Allied (Soviet) High Command. (See Annex to Article XVI.)

Article XVII. Hungarian civil administration will be restored in the whole area of Hungary separated by not less than 50–100 kilometres (depending upon conditions of terrain) from the front line, Hungarian administrative bodies undergaking to carry out, in the interests of the reëstablishment of peace and security, instructions and orders of the Allied (Soviet) High Command or Allied Control Commission issued by them for the purpose of securing the execution of these armistice terms.

Article XVIII. For the whole of the period of the armistice there will be established in Hungary an Allied Control Commission which will regulate and supervise the execution of the armistice terms under the chairmanship of the representative of the Allied (Soviet) High Command and with the participation of representatives of the United Kingdom and the United States.

During the period between the coming into force of the armistice and the

conclusion of hostilities against Germany, the Allied Control Commission will be under the general direction of the Allied (Soviet) High Command. (See Annex to Article XVIII.)

Article XIX. The Vienna Arbitration Award of November 2, 1938 and the Vienna Award of August 30, 1940, are hereby declared to be null and void.

Article XX. The present terms come into force at the moment of their signing.

Done in Moscow January 20, 1945, in one copy which will be entrusted to the safekeeping of the Government of the Union of Soviet Socialist Republics, in the Russian, English and Hungarian languages, the Russian and English texts being authentic.

Certified copies of the present agreement, with Annexes, will be transmitted by the Government of the Union of Soviet Socialist Republics to each of the other Governments on whose behalf the present agreement is being signed.

For the Governments of the Union of Soviet Socialist Republics, the United Kingdom and the United States of America:

Marshal K. E. Voroshilov.

For the Provisional National Government of Hungary:

János Gyöngyösi, Colonel General János Vöros, and Istvan Balogh.

Annex to Agreement Concerning an Armistice Between the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America on the One Hand and Hungary on the Other, Signed in Moscow, January 20, 1945

A. Annex to Article I.

The Hungarian Military Command shall hand over to the Allied (Soviet) High Command within a period fixed by the latter all the information at its disposal regarding the German armed forces and the plans of the German Military Command for the development of military operations against the Union of Soviet Socialist Republics and the other United Nations and also the charts and maps and all operational documents relating to the military operations of the German armed forces.

The measures provided for in Article I of the agreement regarding the internment of nationals of Germany now in Hungarian territory do not apply to nationals of that country of Jewish origin.

B. Annex to Article III.

The assistance specified in Article III of the agreement shall be taken to mean that the Government and High Command of Hungary will place at the disposal of the Allied (Soviet) High Command, for use at its discretion during the armistice, in complete good order and with the personnel required for their maintenance, all Hungarian military, air and river fleet installations

and buildings, ports, barracks, warehouses, airfields, means of communication and meteorological stations which might be required for military needs.

C. Annex to Article XI.

The Government of Hungary will withdraw and redeem within such time limits and on such terms as the Allied (Soviet) High Command may specify, all holdings in Hungarian territory of currencies issued by the Allied (Soviet) High Command, and will hand over currency so withdrawn free of cost to the Allied (Soviet) High Command.

The Government of Hungary will not permit the disposal of external Hungarian assets or disposal of internal Hungarian assets to foreign Governments or foreign nationals without the permission of the Allied (Soviet) High Command or the Allied Control Commission.

D. Annex to Article XII.

The precise nomenclature and varieties of commodities to be delivered by Hungary to the Soviet Union, Czechoslovakia and Yugoslavia in accordance with Article XII of the agreement and also the more precise periods for making these deliveries each year shall be defined in special agreements between the respective Governments. These deliveries will be calculated at 1938 prices with an increase of 15 per cent for industrial equipment and 10 per cent for other goods.

As the basis of calculation for payment of the indemnity foreseen in Article XII of the agreement, the American dollar is to be used at its gold parity on the day of signing of the agreement, *i.e.*, 35 dollars to one ounce of gold.

In connection with Article XII it is understood that the Hungarian Government will immediately make available certain food and other supplies required for relief and rehabilitation of the population of those Czechoslovakian and Yugoslavian territories which have suffered as a result of Hungarian aggression. The quantities of products to be delivered will be determined by agreement between the three governments and will be considered as part of the reparation by Hungary for the loss and damage sustained by Czechoslovakia and Yugoslavia.

E. Annex to Article XVI.

The Government of Hungary will ensure that wireless communication, telegraphic and postal correspondence, and correspondence in cipher and by courier, as well as telephonic communication with foreign countries, of Embassies, Legations and Consulates situated in Hungary will be conducted in the manner laid down by the Allied (Soviet) High Command.

F. Annex to Article XVIII.

Control over the exact execution of the armistice terms will be entrusted to the Allied Control Commission to be established in conformity with Article XVIII of the armistice agreement.

The Government of Hungary and its organs shall fulfill all the instructions of the Allied Control Commission arising out of the armistice agreement.

The Allied Control Commission will set up special organs or sections entrusting them respectively with the execution of various functions. In addition, the Allied Control Commission may have its officers in various parts of Hungary.

The Allied Control Commission will have its seat in the city of Budapest. Moscow, January 20, 1945.

Protocol to the Armistice Agreement with Hungary

In signing the armistice agreement with the Government of Hungary, the Allied Governments signatory thereto have agreed as follows:

One. The term "war material" used in Article VII shall be deemed to include all material or equipment belonging to, used by, or intended for use by the military or para-military formations of the enemy or members thereof.

Two. The use by the Allied (Soviet) High Command of Allied vessels handed over by the Government of Hungary in accordance with Article IX of the armistice and the date of their return to their owners will be the subject of discussion and settlement between the Government of the Soviet Union and the Allied Governments concerned.

Done in Moscow in three copies, each in the Russian and English languages, the Russian and English texts being authentic.

January 20, 1945.

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February 4-11, 1945

The following statement is made by the Prime Minister of Great Britain, the President of the United States of America, and the Chairman of the Council of Peoples Commissars of the Union of Soviet Socialist Republics on the results of the Crimean Conference:

THE DEFEAT OF GERMANY

We have considered and determined the military plans of the three allied powers for the final defeat of the common enemy. The military staffs of the three allied nations have met in daily meetings throughout the Conference. These meetings have been most satisfactory from every point of view and have resulted in closer coördination of the military effort of the three Allies than ever before. The fullest information has been inter-changed. The timing, scope and coördination of new and even more powerful blows to be launched by our armies and air forces into the heart of Germany from the East, West, North and South have been fully agreed and planned in detail.

Our combined military plans will be made known only as we execute them, but we believe that the very close working partnership among the three

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staffs attained at this Conference will result in shortening the War. Meetings of the three staffs will be continued in the future whenever the need arises.

Nazi Germany is doomed. The German people will only make the cost of their defeat heavier to themselves by attempting to continue a hopeless resistance.

THE OCCUPATION AND CONTROL OF GERMANY

We have agreed on common policies and plans for enforcing the unconditional surrender terms which we shall impose together on Nazi Germany after German armed resistance has been finally crushed. These terms will not be made known until the final defeat of Germany has been accomplished. Under the agreed plan, the forces of the three powers will each occupy a separate zone of Germany. Coöordinated administration and control has been provided for under the plan through a central control commission consisting of the Supreme Commanders of the three powers with headquarters in Berlin. It has been agreed that France should be invited by the three powers, if she should so desire, to take over a zone of occupation, and to participate as a fourth member of the control commission. The limits of the French zone will be agreed by the four governments concerned through their representatives on the European Advisory Commission.

It is our inflexible purpose to destroy German militarism and Nazism and to ensure that Germany will never again be able to disturb the peace of the world. We are determined to disarm and disband all German armed forces; break up for all time the German General Staff that has repeatedly contrived the resurgence of German militarism; remove or destroy all German military equipment; eliminate or control all German industry that could be used for military production; bring all war criminals to just and swift punishment and exact reparation in kind for the destruction wrought by the Germans; wipe out the Nazi Party, Nazi laws, organizations and institutions, remove all Nazi and militarist influences from public office and from the cultural and economic life of the German people; and take in harmony such other measures in Germany as may be necessary to the future peace and safety of the world. It is not our purpose to destroy the people of Germany, but only when Nazism and militarism have been extirpated will there be hope for a decent life for Germans, and a place for them in the comity of nations.

REPARATION BY GERMANY

We have considered the question of the damage caused by Germany to the allied nations in this war and recognized it as just that Germany be obliged to make compensation for this damage in kind to the greatest extent possible. A commission for the compensation of damage will be established. The commission will be instructed to consider the question of the extent and

methods for compensating damage caused by Germany to the allied countries. The commission will work in Moscow.

UNITED NATIONS CONFERENCE

We are resolved upon the earliest possible establishment with our allies of a general international organization to maintain peace and security. We believe that this is essential, both to prevent aggression and to remove the political, economic and social causes of war through the close and continuing collaboration of all peace-loving peoples.

The foundations were laid at Dumbarton Oaks. On the important question of voting procedure, however, agreement was not there reached. The present Conference has been able to resolve this difficulty.

We have agreed that a conference of United Nations should be called to meet at San Francisco in the United States on April 25, 1945, to prepare the charter of such an organization, along the lines proposed in the informal conversations at Dumbarton Oaks.

The Government of China and the Provisional Government of France will be immediately consulted and invited to sponsor invitations to the conference jointly with the Governments of the United States, Great Britain and the Union of Soviet Socialist Republics. As soon as the consultation with China and France has been completed, the text of the proposals on voting procedure will be made public.

DECLARATION ON LIBERATED EUROPE

The Premier of the Union of Soviet Socialist Republics, the Prime Minister of the United Kingdom, and the President of the United States of America have consulted with each other in the common interests of the peoples of their countries and those of liberated Europe. They jointly declare their mutual agreement to concert during the temporary period of instability in liberated Europe the policies of their three governments in assisting the peoples liberated from the domination of Nazi Germany and the peoples of the former Axis satellite states of Europe to solve by democratic means their pressing political and economic problems.

The establishment of order in Europe and the rebuilding of national economic life must be achieved by processes which will enable the liberated peoples to destroy the last vestiges of Nazism and Fascism and to create democratic institutions of their own choice. This is a principle of the Atlantic Charter—the right of all peoples to choose the form of government under which they will live—the restoration of sovereign rights and self-government to those peoples who have been forcibly deprived of them by the aggressor nations.

To foster the conditions in which the liberated peoples may exercise these rights, the three governments will jointly assist the people in any European liberated state or former Axis satellite state in Europe where in their judg-

ment conditions require (A) to establish conditions of internal peace; (B) to carry out emergency measures for the relief of distressed peoples; (C) to form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest possible establishment through free elections of governments responsive to the will of the people; and (D) to facilitate where necessary the holding of such elections.

The three governments will consult the other United Nations and provisional authorities or other governments in Europe when matters of direct interest to them are under consideration.

When, in the opinion of the three governments, conditions in any European liberated state or any former Axis satellite state in Europe make such action necessary, they will immediately consult together on the measures necessary to discharge the joint responsibilities set forth in this declaration.

By this declaration we reaffirm our faith in the principles of the Atlantic Charter, our pledge in the declaration by the United Nations, and our determination to build in cooperation with other peace-loving nations world order under law, dedicated to peace, security, freedom and general well-being of all mankind.

In issuing this declaration, the three powers express the hope that the Provisional Government of the French Republic may be associated with them in the procedure suggested.

POLAND

A new situation has been created in Poland as a result of her complete liberation by the Red Army. This calls for the establishment of a Polish provisional government which can be more broadly based than was possible before the recent liberation of Western Poland. The provisional government which is now functioning in Poland should therefore be reorganized on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad. This new government should then be called the Polish Provisional Government of National Unity.

M. Molotov, Mr. Harriman and Sir A. Clark Kerr are authorized as a commission to consult in the first instance in Moscow with members of the present provisional government and with other Polish democratic leaders from within Poland and from abroad, with a view to the reorganization of the present government along the above lines. This Polish Provisional Government of National Unity shall be pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot. In these elections all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates.

When a Polish Provisional Government of National Unity has been properly formed in conformity with the above, the government of the U.S.S.R., which now maintains diplomatic relations with the present provisional government of Poland, and the government of the United Kingdom

and the government of the U. S. A. will establish diplomatic relations with the new Polish Provisional Government of National Unity, and will exchange ambassadors by whose reports the respective governments will be kept informed about the situation in Poland.

The three heads of government consider that the Eastern frontier of Poland should follow the Curzon line with digressions from it in some regions of five to eight kilometres in favour of Poland. They recognized that Poland must receive substantial accessions of territory in the North and West. They feel that the opinion of the new Polish Provisional Government of National Unity should be sought in due course on the extent of these accessions and that the final delimitation of the western frontier of Poland should thereafter await the peace conference.

YUGOSLAVIA

We have agreed to recommend to Marshal Tito and Dr. Subasic that the agreement between them should be put into effect immediately, and that a new government should be formed on the basis of that agreement.

We also recommend that as soon as the new government has been formed it should declare that:

- (1) The anti-Fascist assembly of National Liberation (Avnoj) should be extended to include members of the last Yugoslav Parliament (Skupschina) who have not compromised themselves by collaboration with the enemy, thus forming a body to be known as a temporary Parliament; and,
- (2) Legislative acts passed by the anti-Fascist Assembly of National Liberation will be subject to subsequent ratification by a constituent assembly. There was also a general review of other Balkan questions.

MEETINGS OF FOREIGN SECRETARIES

Throughout the Conference, besides the daily meetings of the heads of governments and the Foreign Secretaries, separate meetings of the three Foreign Secretaries, and their advisors have also been held daily.

These meetings have proved of the utmost value and the Conference agreed that permanent machinery should be set up for regular consultation between the three Foreign Secretaries. They will, therefore, meet as often as may be necessary, probably about every three or four months. These meetings will be held in rotation in the three capitals, the first meeting being held in London, after the United Nations Conference on World Organization.

UNITY FOR PEACE AS FOR WAR

Our meeting here in the Crimea has reaffirmed our common determination to maintain and strengthen in the peace to come that unity of purpose and of action which has made victory possible and certain for the United Nations in this war. We believe that this is a sacred obligation which our Governments owe to our peoples and to all the peoples of the world.

Only with the continuing and growing cooperation and understanding among our three countries and among all the peace-loving nations can the highest aspiration of humanity be realized—a secure and lasting peace which will, in the words of the Atlantic Charter, "afford assurance that all the men in all the lands may live out their lives in freedom from fear and want."

Victory in this war and establishment of the proposed international organization will provide the greatest opportunity in all history to create in the years to come the essential conditions of such a peace.

Signed: Winston S. Churchill Franklin D. Roosevelt

J. STALIN

February 11, 1945.

INTER-AMERICAN CONFERENCE ON WAR AND PEACE

ACT OF CHAPULTEPEC

March 3, 1945

Declaration on reciprocal assistance and American solidarity by the governments represented at the inter-American conference on war and peace. Whereas:

- 1. The peoples of the Americas, animated by a profound love of justice, remain sincerely devoted to the principles of international law;
- 2. It is their desire that such principles, notwithstanding the present difficult circumstances, may prevail with greater force in future international relations;
- 3. The inter-American conferences have repeatedly proclaimed certain fundamental principles, but these must be reaffirmed and proclaimed at a time when the juridical bases of the community of nations are being established:
- 4. The new situation in the world makes more imperative than ever the union and solidarity of the American peoples, for the defense of their rights and the maintenance of international peace;
- 5. The American states have been incorporating in their international law, since 1890, by means of conventions, resolutions and declarations, the following principles:
- (A) The proscription of territorial conquest and the nonrecognition of all acquisitions made by force. (First international conference of American states, 1890.)
- (B) The condemnation of intervention by a state in the internal or external affairs of another. (Seventh International Conference of American States, 1933, and Inter-American Conference for the Maintenance of Peace, 1936.)

¹ Department of State Bulletin, Vol. XII, No. 297 (Mar. 4, 1945), p. 339.

- (C) The recognition that every war or threat of war affects directly or indirectly all civilized peoples, and endangers the great principles of liberty and justice which constitute the American ideal and the standard of its international policy. (Inter-American Conference for the Maintenance of Peace, 1936.)
- (D) The procedure of mutual consultation in order to find means of peaceful cooperation in the event of war or threat of war between American countries. (Inter-American Conference for the Maintenance of Peace, 1936.)
- (E) The recognition that every act susceptible of disturbing the peace of America affects each and every one of them and justifies the initiation of the procedure of consultation. (Inter-American Conference for the Maintenance of Peace, 1936.)
- (F) That any difference or dispute between the American nations, whether its nature or origin, shall be settled by the methods of conciliation, or unrestricted arbitration, or through the operation of international justice. (Inter-American Conference for the Maintenance of Peace, 1936.)
- (G) The recognition that respect for the personality, sovereignty and independence of each American state constitutes the essence of international order sustained by continental solidarity, which historically has been expressed and sustained by declarations and treaties in force. (Ninth International Conference of American States, 1938.)
- (H) The affirmation that respect for the faithful observance of treaties constitutes the indispensable rule for the development of peaceful relations between states and treaties can only be revised by agreement of the contracting parties. (Declaration of American principles, Eighth International Conference of American States, 1938.)
- (I) That in case the peace, security or territorial integrity of any American republic is threatened by acts of any nature that may impair them, they preclaim their common concern and their determination to make effective their solidarity, coördinating their respective sovereign will by means of the procedure of consultation, using the measures which in each case the circumstances may make advisable. (Declaration of Lima, Eighth International Conference of American States, 1938.)
- (J) That any attempt on the part of a non-American State against the integrity or inviolability of the territory, the sovereignty or the political independence of an American State shall be considered as an act of aggression against all the American States. (Declaration XV of the second meeting of the Ministers of Foreign Affairs, Havana, 1940.)
- 6. The furtherance of these principles, which the American States have practiced in order to secure peace and solidarity between the nations of the continents, constitutes an effective means of contributing to the general system of world security and of facilitating its establishment;
- 7. The security and solidarity of the continent are affected to the same extent by an act of aggression against any of the American States by a non-

American State, as by an American State against one or more American States.

. PART I

Declaration:

First. That all sovereign States are juridically equal amongst themselves. Second. That every State has the right to the respect of its individuality and independence, on the part of the other members of the international community.

Third. That every attack of a state against the integrity or the inviolability of territory, or against the sovereignty or political independence of an American state, shall, conformably to Part III thereof, be considered as an act of aggression against the other states which sign this declaration.

In any case, invasion by armed forces of one state into the territory of another, trespassing boundaries established by treaty and marked in accordance therewith, shall constitute an act of aggression.

Fourth. That in case that acts of aggression occur or there may be reasons to believe that an aggression is being prepared by any American state, the states signatory to this declaration will consult amongst themselves in order to agree upon measures they think it may be advisable to take.

Fifth. That during the war and until treaty arrangements recommended in Part II hereof, the signatories of this declaration recognize such threats and acts of aggression as indicated in paragraphs third and fourth above, constitute an interference with the war effort of the United Nation's calling for such procedures, within the scope of their general constitutional and war powers, as may be found necessary including:

Recall of chiefs of diplomatic missions;

Breaking of diplomatic relations;

Breaking of consular relations;

Breaking of postal, telegraphic, telephonic, radio-telephonic relations; Interruption of economic, commercial and financial relations;

Use of armed force to prevent or repel aggression.

Sixth. That the principles and procedure contained in this declaration shall become effective immediately, inasmuch as any act of aggression or threat of aggression during the present state of war interferes with the war effort of the United Nations to obtain victory. Henceforth, and with the view that the principles and procedure herein stipulated shall conform with the constitutional principles of each republic, the respective governments shall take the necessary steps to perfect this instrument in order that it shall be in force at all times.

PART II

Recommendation.

The inter-American conference on problems of war and peace recommends: That for the purpose of meeting threats of acts of aggression against any American republic following the establishment of peace, the governments of the American republics should consider the conclusion, in accordance with their constitutional processes, of a treaty establishing procedures whereby such threats or acts may be met by:

The use, by all or some of the signatories of said treaty thereto, of any one or more of the following measures:

Recall of chiefs of diplomatic missions;

Breaking of diplomatic relations;

Breaking of consular relations;

Breaking of postal, telegraphic, telephonic, radio-telephonic relations; Interruption of economic, commercial and financial relations; use of armed force to prevent or repel agression.

PART III

This declaration and recommendation provide for a regional arrangement for dealing with matters relating to the maintenance of international peace and security as are appropriate of regional action and procedures referred to therein shall be consistent with the purposes and principles of the general international organization when formed.

This declaration and recommendation shall be known by the name of Act of Chapultepec.

INTERNATIONAL CIVIL AVIATION CONFERENCE *

FINAL ACT AND APPENDIXES

December 7, 1944

The Governments of Afghanistan, Australia, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Ireland, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippine Commonwealth, Poland, Portugal, Spain, Sweden, Switzerland, Syria, Turkey, Union of South Africa, United Kingdom, United States of America, Uruguay, Venezuela, and Yugoslavia;

Having accepted the invitation extended to them by the Government of the United States of America to be represented at an International Civil Aviation Conference;

Appointed their respective delegates, who are listed below by countries in the order of alphabetical precedence: †

Who met at Chicago, Illinois, on November 1, 1944, under the Temporary Presidency of Adolf A. Berle, Jr., Chairman of the Delegation of the United States of America.

* Texts as released by Department of-State.

[†] Names of delegates omitted here and in list of committees following.

Henrik de Kauffmann, Danish Minister at Washington, and Mom Rajawongse Seni Pramoj, Thai Minister at Washington, attended the First Plenary Session in response to an invitation extended by the Government of the United States to be present in a personal capacity. The Conference, on the recommendation of the Committee on Credentials, approved the attendance of the Danish Minister and the Thai Minister at the remaining sessions of the Conference.

Warren Kelchner, Chief of the Division of International Conferences, Department of States of the United States, was designated, with the approval of the President of the United States, as Secretary General of the Conference, and Theodore P. Wright, Administrator of Civil Aeronautics, Civil Aeronautics Administration, Department of Commerce of the United States, was designated Technical Secretary of the Conference.

Adolf A. Berle, Jr., Chairman of the Delegation of the United States of America, was elected Permanent President of the Conference at the Second Plenary Session, held on November 2, 1944.

Max Hymans, Chairman of the Delegation of France, and Kia-ngau Chang, Chairman of the Delegation of China, were elected Vice Presidents of the Conference.

The Executive Committee, composed of the Chairmen of the respective Delegations, and presided over by the Temporary President of the Conference, appointed a Steering Committee of the Conference, with the following membership:

STEERING COMMITTEE

The Temporary President appointed the following members of the General Committee constituted by the Conference:

COMMITTEE ON NOMINATIONS

COMMITTEE ON CREDENTIALS

COMMITTEE ON RULES AND REGULATIONS

On November 30, 1944, the Coördinating Committee was appointed by the Executive Committee, with the following membership:

COÖRDINATING COMMITTEE

The Conference was divided into four Technical Committees. The officers of these Committees, as elected by the Conference, and officers of the Subcommittees established by the Committees, are listed below:

COMMITTEE I

MULTILATERAL AVIATION CONVENTION AND INTERNATIONAL AERONAUTICAL BODY

SUBCOMMITTEE 1
International Organization

SUBCOMMITTEE 2

Air Navigation Principles

SUBCOMMITTEE 3

Air Transportation Principles

COMMITTEE II

TECHNICAL STANDARDS AND PROCEDURES

· SUBCOMMITTEE 1

Communications Procedure; Airways System

SUBCOMMITTEE 2

Rules of the Air; Air Traffic Control Practices

SUBCOMMITTEE 3

Standards Governing the Licensing of Operating and Mechanical Personnel; Log Books

SUBCOMMITTEE 4

Airworthiness of Aircraft

SUBCOMMITTEE 5

Registration and Identification of Aircraft

SUBCOMMITTEE 6

Collection and Dissemination of Meteorological Information

SUBCOMMITTEE 7.

Aeronautical Maps and Charts

SUBCOMMITTEE 8

Customs Procedures; Manifests

SUBCOMMITTEE 9

Accident Investigation, Including Search and Salvage

SUBCOMMITTEE 10

Publications and Forms

COMMITTEE III

PROVISIONAL AIR ROUTES

SUBCOMMITTEE 1

Standard Form of Provisional Route Agreements

COMMITTEE IV

INTERIM COUNCIL

SUBCOMMITTEE 1

Composition and Organization of the Interim Council

SUBCOMMITTEE 2

Powers and Duties of the Interim Council

The Final Plenary Session was held on December 7, 1944.

As a result of the deliberations of the Conference, as recorded in the minutes and reports of the respective Committees and Subcommittees and of the Plenary Sessions, the following instruments were formulated:

INTERIM AGREEMENT ON INTERNATIONAL CIVIL AVIATION

CONVENTION ON INTERNATIONAL CIVIL AVIATION

INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT

INTERNATIONAL AIR TRANSPORT AGREEMENT

The following resolutions and recommendations were adopted:

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PREPARATION OF THE FINAL ACT The International Civil Aviation Conference

Resolves:

That the Secretariat be authorized to prepare the Final Act in accordance with the suggestions proposed by the Secretary General in *Journal* No. 34, December 4, 1944 and that the Coördinating Committee review the text:

That the Final Act contain the definitive texts of the instruments formulated by the Conference in plenary session, and that no changes be made therein at the Final Plenary Session.

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DRAFT TECHNICAL ANNEXES

WHEREAS:

The largest possible degree of international standardization of practice in many matters is important to safe, expeditious, and easy air navigation; and

WHEREAS:

These matters typically involve problems of great variety and complexity, and require that much new ground be explored; and

WHEREAS:

Considerable progress has been made, during the discussions of the present Conference, in the development of codes of practice agreed upon as proper by the technicians participating in the discussions, but the time has been too limited, and the number of personnel able to participate directly too small, to permit carrying the discussions to final conviction of the adequacy or correctness of certain of the determinations here made;

The International Civil Aviation Conference

Resolves:

That the drafts of annexes for an international civil aviation convention, which are attached hereto as Appendix V, be accepted by the Conference, upon the bases that:

- (a) The drafts as now presented shall be accepted by the participating States for immediate and continuing study;
- (b) They shall be accepted as constituting models of the desirable scope and arrangement of the several annexes;
- (c) The participating States undertake to forward to the Government of the United States (or to the Provisional International Civil Aviation Organization if it shall in the meantime have been established), by May 1, 1945, any recommendations which they may have for necessary additions, deletions, or amendments;
- (d) The Government of the United States (or the Provisional International Civil Aviation Organization) will transmit such suggestions to the other participating States in anticipation of meetings of the technical committees to be established by the Provisional International Civil Aviation Organization for dealing with the subject matter of the various documents, such meetings to be held as soon as practicable thereafter for the purpose of ultimate acceptance of the annexes in final form for attachment to a convention.
- (e) Meanwhile, in so far as the Technical Subcommittees have been able to agree on recommended practices, the States of the world, bearing in mind their present international obligations, are urged to accept these practices as ones toward which the national practices of the several States should be directed as far and as rapidly as may prove practicable.

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TECHNICAL PERSONNEL

WHEREAS:

The development and maintenance of suitable international standards in matters relating to international air navigation will require constant analysis, by technically qualified personnel, of the development of the pertinent arts and of the various practices existing with respect thereto;

The International Civil Aviation Conference

Resolves:

That the Provisional International Civil Aviation Organization, as soon as possible after its organization, should employ in its Secretariat a suitable body of personnel, expert in the fields of aeronautical science and practice in which continuing study will be particularly needed; and that such technically qualified members of the Secretariat should be charged to analyze and report to the Provisional International Civil Aviation Organization on

problems relating to the drafting of international standards and recommended practices and to conduct and report on such other studies as will promote the safe and efficient conduct of international air transportation.

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METRIC SYSTEM

WHEREAS:

A standard system of measurements in all rules and regulations pertaining to air traffic on international and intercontinental airways would greatly contribute to the safety of these operations; and

WHEREAS:

It is considered of high importance that figures used in rules and regulations and other data, with which air crews and other operational personnel have to deal in the preparation of and during flights over various countries, should consist of round figures which can easily be remembered;

The International Civil Aviation Conference

Resolves:

- 1. That in those cases in which it appears impracticable or undesirable to make use of the metric system as a primary international standard, units in publications and codes of practice directly affecting international air navigation should be expressed both in the metric and English systems; and
- 2. That the Provisional International Civil Aviation Organization shall make further unification of numbering and systems of dimensioning and specification of dimensions used in connection with international air navigation the subject of continuing study and recommendation.

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TRANSFER OF TITLE TO AIRCRAFT

CONSIDERING:

That the sale of aircraft to be used in international operations will render it desirable for the various governments to reach a common understanding on the legal questions involved in the transfer of title:

- The International Civil Aviation Conference

Recommends:

That the various governments represented at this International Civil Aviation Conference give consideration to the early calling of an international conference on private international air law for the purpose of adopting a convention dealing with the transfer of title to aircraft and that such private air law conference include in the bases of discussions:

- (a) The existing draft convention relating to mortgages, other real securities, and aerial privileges; and
- (b) The existing draft convention on the ownership of aircraft and the aeronautic register,

both of which were adopted by the Comité International Technique d'Experts Juridiques Aériens (CITEJA) in 1931.

VI

Rome Convention (May 29, 1933) Relating to the Precautionary Attachment of Aircraft

CONSIDERING:

That the expeditious movement of aircraft in international commerce is essential in order that the fullest advantage may be derived from the rapid means of communication afforded by aircraft;

That the seizure or detention of aircraft where the attaching creditor cannot invoke a judgment and execution obtained beforehand in the ordinary course of procedure, or an equivalent right of execution, affects the expeditious movement of aircraft in international commerce;

The International Civil Aviation Conference

Recommends:

That the various governments represented at this International Civil Aviation Conference give consideration to the desirability of ratifying or adhering to the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft, signed at Rome on May 29, 1933, during the Third International Conference on Private Air Law, in so far as such governments have not already ratified or adhered to that Convention.

VII

RESUMPTION OF AND COÖRDINATION WITH THE SESSIONS OF CITEJA CONSIDERING:

That the Comité International Technique d'Experts Juridiques Aériens (CITEJA), created pursuant to a recommendation adopted at the First International Conference on Private Air Law held at Paris in 1925, has made considerable progress in the development of a code of private international air law through the preparation of draft international conventions for final adoption at periodic international conferences on private air law;

That the further elaboration of this code of private international air law through the completion of pending CITEJA projects and the initiation of new studies in the field of private air law will contribute materially to the development of international civil aviation:

The International Civil Aviation Conference

Recommends:

1. That the various governments represented at this International Civil Aviation Conference give consideration to the desirability of bringing about the resumption at the earliest possible date of the CITEJA sessions which were suspended because of the outbreak of war, of making necessary contributions toward the expenses of the Secretariat of CITEJA, and of appointing legal experts to attend the CITEJA meetings; and

2. That consideration also be given by the various governments to the desirability of coördinating the activities of CITEJA with those of the Provisional International Civil Aviation Organization and, after it shall have come into existence, of the permanent International Civil Aviation Organization established pursuant to the Convention on International Civil Aviation drawn up at Chicago on December 7, 1944.

VIII

STANDARD FORM OF AGREEMENT FOR PROVISIONAL AIR ROUTES

WHEREAS:

The course of military events will free certain areas of the world from the interruption which the war has caused to civil air traffic;

WHEREAS:

The civil transport systems and facilities of many States have been reduced to a level which is far from adequate, but on the other hand there exist wide opportunities for utilizing the airplane, which has demonstrated its efficiency in rendering rapid transportation on a large scale basis, in bringing aid to needy countries and in hastening the return of normal trade and commerce;

WHEREAS:

The possibilities of air transportation are so great and at the same time so unpredictable, that it is desirable to promote early development in this field during a transitional period, in order to obtain practical experience for giving effect to more permanent arrangements at a later date;

WHEREAS:

Every State has complete and exclusive sovereignty over the airspace above its territory; and

WHEREAS:

It is desirable that there should be as great a measure of uniformity as possible in any agreements that may be made between States for the operation of air services;

The International Civil Aviation Conference

Recommends:

- 1. That each State undertake to refrain from including specific provisions in an agreement which grant exclusive rights of transit, non-traffic stop, and commercial entry to any other State or airline, or from making any agreement excluding or discriminating against the airlines of any State, and will terminate any existing exclusive or discriminatory rights as soon as such action can be taken under presently outstanding agreements;
- 2. That the clauses contained in the draft form of standard agreement hereinafter set out shall be regarded as standard clauses for incorporation in the agreements referred to above, it being understood that the right is reserved to the States concerned to effect such changes of wording as may

be necessary in the particular case and to add additional clauses so long as such changes or additions are not inconsistent with the standard clauses, it being further understood that nothing herein shall prevent any State from entering into agreements with airlines of other States provided that such agreements shall incorporate the aforementioned standard clauses to the extent that these may be applicable:

FORM OF STANDARD AGREEMENT FOR PROVISIONAL AIR ROUTES

- (1) The contracting parties grant the rights specified in the Annex * hereto necessary for establishing the international civil air routes and services therein described, whether such services be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted.
- (2) (a) Each of the air services so described shall be placed in operation as soon as the contracting party to whom the right has been granted by paragraph (1) to designate an airline or airlines for the route concerned has authorized an airline for such route, and the contracting party granting the right shall, subject to Article (7) hereof, be bound to give the appropriate operating permission to the airline or airlines concerned; provided that the airline so designated may be required to qualify before the competent aeronautical authorities of the contracting party granting the rights under the laws and regulations normally applied by these authorities before being permitted to engage in the operations contemplated by this Agreement; and provided that in areas of hostilities or of military occupation, or in areas affected thereby, such inauguration shall be subject to the approval of the competent military authorities.
- (b) It is understood that any contracting party granted commercial rights under this Agreement should exercise them at the earliest practicable date except in the case of temporary inability to do so.
- (3) Operating rights which may have been granted previously by any of the contracting parties to any State not a party to this Agreement or to an airline shall continue in force according to their terms.
- (4) In order to prevent discriminatory practices and to assure equality of treatment, it is agreed that:
- (a) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of airports, and other facilities. Each of the contracting parties agrees, however, that these charges shall not be higher than would be paid for the use of such air-
- * An Annex will include a description of the routes and of the rights granted whether of transit only, of non-traffic stops or of commercial entry as the case may be, and the conditions incidental to the granting of the rights. Where rights of non-traffic stop or commercial rights are granted, the Annex will include a designation of the ports of call at which stops can be made, or at which commercial rights for the embarkation and disembarkation of passengers, cargo and mail are authorized, and a statement of the contracting parties to whom the respective rights are granted.

ports and facilities by its national aircraft engaged in similar international services.

- (b) Fuel, lubricating oils and spare parts introduced into the territory of a contracting party by another contracting party or its nationals, and intended solely for use by aircraft of such other contracting party shall be accorded national and most-favored-nation treatment with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered.
- (c) The fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board civil aircraft of the airlines of the contracting parties authorized to operate the routes and services described in the Annex shall, upon arriving in or leaving the territory of other contracting parties, be exempt from customs, inspection fees or similar duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.
- (5) Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one contracting party shall be recognized as valid by the other contracting parties for the purpose of operating the routes and services described in the Annex. Each contracting party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another State.
- (6) (a) The laws and regulations of a contracting party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting parties without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that party.
- (b) The laws and regulations of a contracting party as to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations, relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew, or cargo upon entrance into or departure from, or while within the territory of that party.
- (7) Each contracting party reserves the right to withhold or revoke a certificate or permit to an airline of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a party to this Agreement, or in case of failure of an airline to comply with the laws of the State over which it operates, as described in Article (6) hereof, or to perform its obligations under this Agreement.
- (8) This Agreement and all contracts connected therewith, shall be registered with the Provisional International Civil Aviation Organization.

- (9) [Where desired, here insert provisions for arbitration, the details of which will be a matter for negotiation between the parties to each agreement.]
- (10) This Agreement shall continue in force until such time as it may be amended, or superseded by a general multilateral air convention, provided, however, that the rights for services granted under this Agreement may be terminated by giving one year's notice to the contracting party whose airlines are concerned. Such notice may be given at any time after a period of two months to allow for consultation between the contracting party giving notice and the contracting parties served by the routes.

IX

FLIGHT DOCUMENTS AND FORMS The International Civil Aviation Conference

Resolves:

That the Provisional International Civil Aviation Organization, when established, be requested to give consideration to the question of the publication of flight documents and forms in representative languages of areas through which major international air routes are operated.

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RECOMMENDATION THAT CERTAIN MATTERS BE REFERRED TO THE INTERIM COUNCIL FOR STUDY

The International Civil Aviation Conference

Recommends:

That the matters on which it has not been possible to reach agreement between the States represented at this Conference, in particular the matters comprehended within the headings of Articles II, X, XI and XII of Document 358 (Draft of a Section of an International Air Convention Relating Primarily to Air Transport), together with Conference Documents 384, 385, 400, 407, and 429, and all other documentation relating thereto, be referred to the Interim Council provided for in the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944, with instructions to give these matters continuing study and to submit a report thereon with recommendations to the Interim Assembly as soon as practicable.

XI

Publication of Documentation `The International Civil Aviation Conference`

Resolves:

That the Government of the United States of America be authorized to publish the Final Act of this Conference; the Reports of the Committees; the Minutes of the Public Sessions; the Texts of any Multilateral Agreements concluded at the Conference; and to make available for publication such additional documents in connection with the work of this Conference as in its judgment may be considered in the public interest.

XII

The International Civil Aviation Conference

Resolves:

- 1. To express its gratitude to the President of the United States, Franklin D. Roosevelt, for his initiative in convening the present Conference and for its preparation;
- 2. To express to its President, Adolf A. Berle, Jr., its deep appreciation for the admirable manner in which he has guided the Conference;
- 3. To express to the Officers and Staff of the Secretariat its appreciation for their untiring services and diligent efforts in contributing to the attainment of the objectives of the Conference.

In witness whereof, the following Delegates sign the present Final Act.

Done at Chicago the seventh day of December 1944, in the English language. A text drawn up in the English, French, and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D. C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to each of the governments represented at the Conference.

APPENDIX I

Interim Agreement on International Civil Aviation *

The undersigned, on behalf of their respective governments, agree to the following:

ARTICLE I

THE PROVISIONAL ORGANIZATION

Section 1

Provisional international organization

The signatory States hereby establish a provisional international organization of a technical and advisory nature of sovereign States for the purpose of collaboration in the field of international civil aviation. The organization shall be known as the Provisional International Civil Aviation Organization.

Section 2

Structure of provisional organization

The Organization shall consist of an Interim Assembly and an Interim Council, and it shall have its seat in Canada.

*Accepted by the United States on February 8, 1945: Department of State Bulletin, No. 294 (February 11, 1945), p. 198.

Duration of interim period

The Organization is established for an interim period which shall last until a new permanent convention on international civil aviation shall have come into force or another conference on international civil aviation shall have agreed upon other arrangements; *Provided*, *however*, That the interim period shall in no event exceed three years from the coming into force of the present Agreement.

Section 4

Legal capacity

The Organization shall enjoy in the territory of each member State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and laws of the State concerned.

ARTICLE II

THE INTERIM ASSEMBLY

Section 1

Meetings of Assembly

The Assembly shall meet annually and shall be convened by the Council at a suitable time and place. Extraordinary meetings of the Assembly may be held at any time upon call of the Council or at the request of any ten member States of the Organization addressed to the Secretary General.

Representation and voting power in Assembly

All member States shall have equal right to be represented at the meetings of the Assembly and each member State shall be entitled to one vote. Delegates representing member States may be assisted by technical advisers who may participate in the meetings but shall have no vote.

Quorum of Assembly

A majority of the member States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided herein, voting of the Assembly shall be by a simple majority of the member States present.

Section 2

Powers and duties of Assembly

The powers and duties of the Assembly shall be to:

- 1. Elect at each meeting its President and other officers.
- 2. Elect the member States to be represented on the Council, as provided in Article III, Section 1.
- 3. Examine, and take appropriate action upon, the reports of the Council and decide upon any matter referred to it by the Council.
- 4. Determine its own rules of procedure and establish such subsidiary commissions and committees as may be necessary or advisable.

- 5. Approve an annual budget and determine the financial arrangements of the Organization.
- 6. At its discretion, refer to the Council any specific matter for its consideration and report.
- 7. Delegate to the Council all the powers and authority that may be considered necessary or advisable for the discharge of the duties of the Organization. Such delegations of authority may be revoked or modified at any time by the Assembly.
- 8. Deal with any matter within the sphere of action of the Organization not specifically assigned to the Council.

ARTICLE III

THE INTERIM COUNCIL

Section 1

Composition of Council

The Council shall be composed of not more than 21 member States elected by the Assembly for a period of two years. In electing the members of the Council, the Assembly shall give adequate representation (1) to those member States of chief importance in air transport, (2) to those member States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation, and (3) to those member States not otherwise included whose election will insure that all major geographical areas of the world are represented.

Filling vacancies on Council

Any vacancy on the Council shall be filled by the Assembly at its next meeting. Any member State of the Council so elected shall hold office for the remainder of its predecessor's term of office.

Section 2

No representative of a member State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.

Section 3

Officers of Council

The Council shall elect, and determine the emoluments of, a President, for a term not to exceed the interim period. The President shall have no vote. The Council shall also elect from among its members one or more Vice Presidents, who shall retain their right to vote when serving as Acting President. The President need not be selected from the members of the Council but if a member is elected, his seat shall be deemed vacant and it shall be filled by the State which he represented.

Duties of the President

The President shall convene, and preside at, the meetings of the Council; he shall act as the Council's representative; and he shall carry out such functions on behalf of the Council as may be assigned to him.

Decisions of Council

Decisions by the Council will be deemed valid only when approved by a majority of all the members of the Council.

Section 4

Participation in matters before Council

Any member State not a member of the Council may participate in the deliberations of the Council whenever any decision is to be taken which especially concerns such member State. Such member State, however, shall not have the right to vote; provided that, in any case in which there is a dispute between one or more member States who are not members of the Council and one or more member States who are members of the Council, any State within the second category which is a party to the dispute shall have no right to vote on that dispute.

Section 5

Powers and duties of Council

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The powers and duties of the Council shall be to:

- 1. Carry out the directives of the Assembly.
- 2. Determine its own organization and rules of procedure.
- 3. Determine the method of appointment, emoluments, and conditions of service of the employees of the Organization.
- 4. Appoint a Secretary General.
- 5. Provide for the establishment of any subsidiary working groups which may be considered desirable, among which there shall be the following interim committees:
 - a. A Committee on Air Transport,
 - b. A Committee on Air Navigation, and
 - c. A Committee on International Convention on Civil Aviation.

If a member State so desires, it shall have the right to appoint a representative on any such interim committee or working group.

- Prepare and submit to the Assembly budget estimates of the Organization, and statements of accounts of all receipts and expenditures and to authorize its own expenditures.
- 7. Enter into agreements with other international bodies when it deems advisable for the maintenance of common services and for common arrangements concerning personnel and, with the approval of the Assembly, enter into such other arrangements as may facilitate the work of the Organization.

Section 6.

Functions of Council

In addition to the powers and authority which the Assembly may delegate, to it, the functions of the Council shall be to:

1. Maintain liaison with the member States of the Organization, calling upon them for such pertinent data and information as may be

required in giving consideration to recommendations made by them.

- 2. Receive, register, and hold open to inspection by member States all existing contracts and agreements relating to routes, services, landing rights, airport facilities, or other international air matters to which any member State or any airline of a member State is a party.
- 3. Supervise and coördinate the work of:
 - a. The Committee on Air Transport, whose functions shall be to:
 - (1) Observe, correlate, and continuously report upon the facts concerning the origin and volume of international air traffic and the relation of such traffic, or the demand therefor, to the facilities actually provided.
 - (2) Request, collect, analyze and report on information with respect to subsidies, tariffs, and costs of operation.
 - (3) Study any matters affecting the organization and operation of international air services, including the international ownership and operation of international trunk lines.
 - (4) Study and report with recommendations to the Assembly as soon as practicable on the matters on which it has not been possible to reach agreement among the nations represented at the International Civil Aviation Conference, convened in Chicago, November 1, 1944, in particular the matters comprehended within the headings of Articles II, X, XI, and XII of Conference Document 422, together with Conference Documents 384, 385, 400, 407, and 429, and all other documentation relating thereto.
 - b. The Committee on Air Navigation, whose functions shall be to;
 - (1) Study, interpret and advise on standards and procedures with respect to communications systems and air navigation aids, including ground marks; rules of the air and air traffic control practices; standards governing the licensing of operating and mechanical personnel; airworthiness of aircraft; registration and identification of aircraft; meteorological protection of international aeronautics; logbooks and manifests; aeronautical maps and charts; airports; customs, immigration, and quarantine procedure; accident investigation, including search and salvage; and the further unification of numbering and systems of dimensioning and specification of dimensions used in connection with international air navigation.
 - (2) Recommend the adoption, and take all possible steps to secure the application, of minimum requirements and standard procedures with respect to the subjects in the preceding paragraph.
 - (3) Continue the preparation of technical documents, in accordance with the recommendations of the International Civil

Aviation Conference approved at Chicago on December 7, 1944, and with the resulting suggestions of the member States, for attachment to the Convention on International Civil Aviation, signed at Chicago on December 7, 1944.

- c. The Committee on International Convention on Civil Aviation, whose functions shall be to continue the study of an international convention on civil aviation.
- 4. Receive and consider the reports of the committees and working groups.
- 5. Transmit to each member State the reports of these committees and working groups and the findings of the Council thereon.
- 6. Make recommendations with respect to technical matters to the member States of the Assembly individually or collectively.
- 7. Submit an annual report to the Assembly.
- 8. When expressly requested by all the parties concerned, act as an arbitral body on any differences arising among member States relating to international civil aviation matters which may be submitted to it. The Council may render an advisory report or, if the parties concerned so expressly decide, they may obligate themselves in advance to accept the decision of the Council. The procedure to govern the arbitral proceedings shall be determined in agreement between the Council and all the interested parties.
- 9. On direction of the Assembly, convene another conference on international civil aviation; or at such time as the Convention is ratified, convene the first Assembly under the Convention.

ARTICLE IV

THE SECRETARY GENERAL

Functions of Secretary General

The Secretary General shall be the chief executive and administrative officer of the Organization. The Secretary General shall be responsible to the Council as a whole and, following established policies of the Council, shall have full power and authority to carry out the duties assigned to him by the Council. The Secretary General shall make periodic reports to the Council covering the progress of the Secretariat's activities. The Secretary General shall appoint the staff of the Secretariat. He shall likewise appoint the secretariat and staff necessary to the functioning of the Assembly, of the Council, and of Committees or such working groups as are mentioned in the present Agreement or may be constituted pursuant thereto.

ARTICLE V

FINANCES

Each member State shall bear the expenses of its own delegation to the Assembly and the salary, travel and other expenses of its own delegate on the Council and of its representatives on committees or subsidiary working groups.

Contributions

The expenses of the organization shall be borne by the member States in proportions to be decided by the Assembly. Funds shall be advanced by each member State to cover the initial expenses of the Organization.

Suspension for financial delinquency

The Assembly may suspend the voting power of any member State that fails to discharge, within a reasonable period, its financial obligations to the Organization.

ARTICLE VI

SPECIAL DUTIES

The Organization shall also carry out the functions placed upon it by the International Air Services Transit Agreement and by the International Air Transport Agreement drawn up at Chicago on December 7, 1944, in accordance with the terms and conditions therein set forth.

Members of the Assembly and the Council who have not accepted the International Air Services Transit Agreement or the International Air Transport Agreement drawn up at Chicago on December 7, 1944 shall not have the right to vote on any questions referred to the Assembly or Council under the provisions of the relevant Agreements.

ARTICLE VII

TRANSFER OF FUNCTIONS, RECORDS, AND PROPERTY

The exercise of any functions which shall have been herein assigned to the Provisional Organization shall cease at any time that those particular functions have been completed or transferred to another international organization. At the time of the coming into force of the Convention on International Civil Aviation signed at Chicago, December 7, 1944, the records and property of the Provisional Organization shall be transferred to the International Civil Aviation Organization established under the above-mentioned Convention.

ARTICLE VIII

FLIGHT OVER TERRITORY OF MEMBER STATES

Section 1

Sovereignty

The member States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Section 2

Territory

For the purposes of this Agreement the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

Civil and state aircraft

This Agreement shall be applicable only to civil aircraft, and shall not be applicable to State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

Section 4

Landing at customs airport

Except in a case where, under the terms of an agreement or of a special authorization, aircraft are permitted to cross the territory of a member State without landing, every aircraft which enters the territory of a member State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a member State, such aircraft shall depart from a similarly designated customs airport. Particulars of all designated customs airports shall be published by the State and transmitted to the Provisional International Civil Aviation Organization for communication to all other member States.

Section 5

Applicability of air regulations

Subject to the provisions of this Agreement, the laws and regulations of a member State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all member States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State.

Section 6

Rules of the air, et cetera

Each member State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever it may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each member State undertakes to insure the prosecution of all persons violating the regulations applicable.

Section 7

Entry and clearance regulations

The laws and regulations of a member State as to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrancé into or departure from, or while within the territory of that State.

Prevention of spread of disease

The member States agree to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, and plague, and such other communicable diseases as the member States shall from time to time decide to designate, and to that end member States will keep in close consultation with the agencies concerned with international regulations relating to sanitary measures applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the member States may be parties.

Section 9

Each member State may, subject to the provisions of this Agreement,

Designation of routes and airports

1. Designate the route to be followed within its territory by any international air service and the airports which any such service may use;

Charges for use of airports and facilities

2. Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services;

provided that, upon representation by an interested member State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned.

Section 10

Search of aircraft

The appropriate authorities of each of the member States shall have the right, without unreasonable delay, to search aircraft of the other member States on landing or departure, and to inspect the certificates and other documents prescribed by this Agreement.

ARTICLE IX

MEASURES TO FACILITATE AIR NAVIGATION

Section 1

Air navigation facilities

Each member State undertakes, so far as it may find practicable, to make available such radio facilities, such meteorological services, and such other air navigation facilities as may from time to time be required for the operation of safe and efficient scheduled international air services under the provisions of this Agreement.

Aircraft in distress

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Each member State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to the control of its own authorities, the owners or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances.

Section 3

Investigation of accidents

In the event of an accident to an aircraft of a member State occurring in the territory of another member State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State.

ARTICLE X

CONDITIONS TO BE FULFILLED WITH RESPECT TO AIRCRAFT

Section 1

Documents carried in aircraft

Every aircraft of a member State, engaged in international navigation, shall carry the following documents:

- (a) Its certificate of registration.
- (b) Its certificate of airworthiness.
- (c) The appropriate licenses for each member of the crew.
- (d) Its journey log book.
- (e) If it is equipped with radio apparatus, the aircraft radio station license.
- (f) If it carries passengers, a list of their names and places of embarkation and destination.
- (g) If it carries cargo, a manifest and detailed declaration of the cargo.

Section 2

Aircraft radio equipment

- (a) Aircraft of each member State may, in or over the territory of other member States, carry radio transmitting apparatus only if a license to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered. The use of radio transmitting apparatus in the territory of the member State whose territory is flown over shall be in accordance with the regulations prescribed by that State.
 - (b) Radio transmitting apparatus may be used only by members of the

flight crew who are provided with a special license for the purpose, issued by the appropriate authorities of the State in which the aircraft is registered.

Section 3

Certificates of airworthiness

Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

Section 4

Licenses of personnel

- (a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered.
- (b) Each member State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another member State.

Section 5

Recognition of certificates and licenses

Subject to the provisions of Section 4 (b), certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the member State in which the aircraft is registered, shall be recognized as valid by the other member State.

Section 6

Journey logbooks

There shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew and each journey.

Section 7

Photographic apparatus

Each member State may prohibit or regulate the use of photographic apparatus in aircraft over its territory.

ARTICLE XI

AIRPORTS AND AIR NAVIGATION FACILITIES

Airports and air navigation facilities

Where a member State desires assistance in the provision of airports or air navigation facilities in its territory, the Council may make arrangements for the provision of such assistance so far as may be practicable in accordance with the provisions of Chapter XV of the Convention on International Civil Aviation signed at Chicago, December 7, 1944.

ARTICLE XII

JOINT OPERATING ORGANIZATIONS AND ARRANGEMENTS

Section 1 ...

Constituting joint organizations

Nothing in this Agreement shall prevent two or more member States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Agreement, including those relating to the registration of agreements with the Council.

Section 2

The Council may suggest to member States concerned that they form joint organizations to operate air services on any routes or in any regions.

Section 3

Participation in operating organizations

A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be State-owned or partly State-owned or privately owned.

ARTICLE XIII

UNDERTAKINGS OF MEMBER STATES

Section 1

Filing contracts

Each member State undertakes to transmit to the Council copies of all existing and future contracts and agreements relating to routes, services, landing rights, airport facilities, or other international air matters to which any member State or any airline of a member State is a party, as described in Article III, Section 6, Subsection 2.

Section 2

Filing statistics

Each member State undertakes to require its international airlines to file with the Council, in accordance with requirements laid down by the Council, traffic reports, cost statistics, and financial statements as described in Article III, Section 6, Subsection 3, a, (1) and (2), showing, among other things, all receipts and the sources thereof.

Section 3

Application of aviation practices

The member States undertake, with respect to the matters set forth in

Article III, Section 6, Subsection 3, b, (1), to apply, as rapidly as possible, in their national civil aviation practices, the general recommendations of the International Civil Aviation Conference, convened in Chicago, November 1, 1944, and such recommendations as will be made through the continuing study of the Council.

ARTICLE XIV

WITHDRAWAL

Any member State, a party to the present Agreement, may withdraw therefrom on six months' notice given by it to the Secretary General, who shall at once inform all the member States of the Organization of such notice of withdrawal.

ARTICLE XV

DEFINITIONS

For the purpose of this Agreement the expression:

- (a) "Air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.
- (b) "International air service" means an air service which passes through the air space over the territory of more than one State.
- (c) "Airline" means any air transport enterprise offering or operating an international air service.

ARTICLE XVI

ELECTION OF FIRST INTERIM COUNCIL

Composition of first council

The first Interim Council shall be composed of the States elected for that purpose by the International Civil Aviation Conference convened in Chicago on November 1, 1944, provided that no State thus elected shall become a member of the Council until it has accepted the present Agreement and unless such acceptance has taken place within six months after December 7, 1944. In no case shall the term of office of a State as a member of the first Interim Council begin before or go beyond the period of two years, starting from the coming into force of the present Agreement.

Taking seat on Council

Each State so elected to the Interim Council shall take its seat in the Council upon acceptance by that State of this Agreement or upon the entry into force of this Agreement, whichever is the later date, and it shall hold its seat until the end of the two years following the coming into force of this Agreement, *Provided*, that any State so elected to the Council which does not accept this Agreement within six months after the above-mentioned election shall not become a member of the Council and the seat shall remain vacant until the next meeting of the Assembly.

ARTICLE XVII

SIGNATURES AND ACCEPTANCES OF AGREEMENT

Signing the Agreement

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to the present Interim Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the Governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that Government and an obligation binding upon it.

Acceptance of Agreement

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Any State, a member of the United Nations and any State associated with them, as well as any State which remained neutral during the present world conflict, not a signatory to this Agreement, may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

Coming into force

The present Interim Agreement shall come into force when it has been accepted by 26 States. Thereafter it will become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government.

The Government of the United States shall inform all governments represented at the International Civil Aviation Conference referred to of the date on which the present Interim Agreement comes into force and shall likewise notify them of all acceptances of the Agreement.

In WITNESS WHEREOF, the undersigned, having been duly authorized sign this Agreement on behalf of their respective governments on the dates appearing opposite their signatures.

Done at Chicago the seventh day of December 1944, in the English language. A text drawn up in the English, French, and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D. C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign and accept this Agreement.

APPENDIX III

International Air Services Transit Agreement *

The States which sign and accept this International Air Services Transit Agreement, being members of the International Civil Aviation Organization, declare as follows:

* Above, p. 122, note. Appendixes II and V are not reproduced here.

ARTICLE I

Section 1

Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

(1) The privilege to fly across its territory without landing;

(2) The privilege to land for non-traffic purposes.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and, when it comes into force, with the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on December 7, 1944.

Section 3

A contracting State granting to the airlines of another contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of a contracting State.

Section 4

Each contracting State may, subject to the provisions of this Agreement,

- (1) Designate the route to be followed within its territory by any international air service and the airports which any such service may use;
- (2) Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report

and make recommendations thereon for the consideration of the State or States concerned.

Section 5

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

ARTICLE II

Section 1

A contracting State which deems that action by another contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon inquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the contracting States concerned. If thereafter a contracting State concerned shall in the opinion of the Council unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

Section 2

If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention.

ARTICLE III

This Agreement shall remain in force as long as the above-mentioned Convention; provided, however, that any contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other contracting States of such notice and withdrawal.

ARTICLE IV

Pending the coming into force of the above-mentioned Convention, all references to it herein, other than those contained in Article II, Section 2,

and Article V, shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and Interim Council, respectively.

ARTICLE V

For the purposes of this Agreement, "territory" shall be defined as in Article 2 of the above-mentioned Convention.

ARTICLE VI

SIGNATURES AND ACCEPTANCES OF AGREEMENT

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State.

In witness whereor, the undersigned, having been duly authorized, sign this Agreement on behalf of their respective governments on the dates appearing opposite their respective signatures.

Done at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French, and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D. C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or accept this Agreement.

APPENDIX IV International Air Transport Agreement*

The States which sign and accept this International Air Transport Agreement being members of the International Civil Aviation Organization declare as follows:

ARTICLE I

Section 1

Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes;
- (3) The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;
- (4) The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;
- (5) The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.

With respect to the privileges specified under paragraphs (3), (4), and (5) of this Section, the undertaking of each contracting State relates only to through services on a route constituting a reasonably direct line out from and back to the homeland of the State whose nationality the aircraft possesses.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and, when it comes into force, with the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on December 7, 1944.

Section 3

A contracting State granting to the airlines of another contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

* Above, p. 122, note.

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Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of any contracting State.

Section 4

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Section 5

Each contracting State may, subject to the provisions of this Agreement,

- (1) Designate the route to be followed within its territory by any international air service and the airports which any such service may use;
- (2) Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned,

Section θ

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

ARTICLE III

Section 1

The contracting States accept this Agreement as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings.

A contracting State which has undertaken any other obligations inconsistent with this Agreement shall take immediate steps to procure its release from the obligations. If an airline of any contracting State has entered into any such inconsistent obligations, the State of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Agreement.

Section 2

Subject to the provisions of the preceding Section, any contracting State may make arrangements concerning international air services not inconsistent with this Agreement. Any such arrangement shall be forthwith registered with the Council; which shall make it public as soon as possible.

ARTICLE III

Each contracting State undertakes that in the establishment and operation of through services due consideration shall be given to the interests of the other contracting States so as not to interfere unduly with their regional services or to hamper the development of their through services.

ARTICLE IV

Section 1

Any contracting State may by reservation attached to this Agreement at the time of signature or acceptance elect not to grant and receive the rights and obligations of Article I, Section 1, paragraph (5), and may at any time after acceptance, on six months' notice given by it to the Council, withdraw itself from such rights and obligations. Such contracting State may on six months' notice to the Council assume or resume, as the case may be, such rights and obligations. No contracting State shall be obliged to grant any rights under the said paragraph to any contracting State not bound thereby.

Section 2

A contracting State which deems that action by another contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon inquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the contracting States concerned. If thereafter a contracting State concerned shall in the opinion of the Council unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such contracting State for such period of

time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

Section 3

If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention.

ARTICLE V

This Agreement shall remain in force as long as the above-mentioned Convention; provided, however, that any contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other contracting States of such notice and withdrawal.

ARTICLE VI

Pending the coming into force of the above-mentioned Convention, all references to it herein other than those contained in Article IV, Section 3, and Article VII shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and the Interim Council, respectively.

ARTICLE VII

For the purposes of this Agreement, "territory" shall be defined as in Article 2 of the above mentioned Convention.

ARTICLE VIII

SIGNATURES AND ACCEPTANCES OF AGREEMENT

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State.

In witness whereof, the undersigned, having been duly authorized, sign this Agreement on behalf of their respective governments on the date appearing opposite their respective signatures.

Done at Chicago the seventh day of December 1944 in the English language. A text drawn up in the English, French, and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D. C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or accept this Agreement.

AMERICAN AND CANADIAN BAR ASSOCIATIONS

Consensus of Views on the International Court of the United Nations Organization*

March 22, 1945

Joint Statement by the Chairmen of the Two Committees

Alive to the vast significance of the current efforts to organize the Nations for peace and security, the American Bar Association and the Canadian Bar Association each created Special Committees to consider the questions involved, more particularly as they relate to law and the administration of justice among Nations.

When the Dumbarton Oaks Proposals were made public on October 7, 1944, they raised numerous questions as to "an international court of justice" as a part of the new Organization, and as to the rôle of international law therein; but solutions of them were deferred.

This situation seemed to call for the active interest of members of the profession of law, to develop their considered views and make such suggestions as they could from their experience, for dealing with the questions left open at Dumbarton Oaks.

Instead of having the matters reported on by the Committees in first instance—which would have resulted in recommendations drafted by a few men—the two Associations coordinated their activities and took the ques-

* Not official; see Joint Statement by the Chairmen of the Two Committees, below.

tions out to Regional Group Conferences of lawyers, held throughout the United States and Canada.

Twenty-five such Conferences were held—eighteen in the United States and seven in Canada—to formulate the considered opinions of representative lawyers in each region. Through bringing together the views expressed in the many separate meetings, a consensus was obtained on the various questions.

The results are presented in the summaries which accompany this joint statement. It is hoped that they will be informative and useful to the representatives of the Governments charged with the responsibility of finding solutions for the pending problems.

The Present Opportunity

With the effort to create an adequate general international organization so well launched and so generally supported, a decisive moment has arrived in the long history of the movement to establish firmly an international Court of Justice and a broadened authority for law among the Nations.

It is impossible to envisage an organized world without organized justice. It is difficult to foresee a lasting peace unless the present unity is expanded and made solid, through organizing institutions which will accustom the peoples of all Nations to seek and accept the peaceful determination of controversies by law-governed tribunals.

Yet the Dumbarton Oaks Proposals, in the form in which they were offered for public discussion last October, have aroused concern lest the new international organization be cast in too much of a political rather than a legal mould. The Proposals contemplate "an international court of justice" as one of the principal organs of the new Organization, but they leave as unfinished business the many substantial problems involved in an agreement on the Statute of the Court.

Perhaps due to their instructions at the time, the conferees at Dumbarton Oaks concentrated their efforts on outlining an effective plan of international organization for security, but the rôle of international adjudication as one of the key-stones of peace and law was left for later formulation.

While the Dumbarton Oaks Proposals contain some indications as to the rôle of a court in the new Organization, they present in the alternative, as to its Statute: (a) The continuance of the existing Statute of the Permanent Court of International Justice (the World Court) with such modifications as may be desirable; or (b) The drafting of a new statute based upon the existing Statute. The lawyers who met in these many conferences saw clearly that there would be a vast difference between these alternatives: The first would keep continuity and save the results of the efforts which have persisted during a century. The second would break the continuity with the past, and might involve reopening difficulties which have been surmounted and striking out along untried lines.

In a time of high mortality among international institutions—when pending official proposals call for supplanting the League of Nations, the International Institute of Agriculture, the Bank for International Settlements, and the Paris Convention on International Aviation—the reference to "an international court" and the suggestion that alternatives are open as to the Statute have caused concern among those who hope that the new Organization will retain and strengthen the institutions which have been builded with so much effort and have represented measurable progress toward the great objectives. The gains which have come from the long struggle to extend the reach of law in international relations cannot lightly be sacrificed; their preservation should be an active preoccupation of the United Nations in launching the new Organization.

Lawyers and other citizens of the two countries were heartened when, in the Chicago Civil Aviation Agreements drafted and accepted two months after the Dumbarton Oaks Proposals had been promulgated, the Governments accomplished the inclusion of a specific provision, favored by the representatives of the United States, for the settlement of certain controversies through resort to the existing Permanent Court of International Justice. This parallels the provision in some 350 existing treaties and agreements in force between Nations, obligating them in advance to accept the jurisdiction of the existing Court in the event of disputes—all of which might be endangered through innovation as to the Court and Statute.

A Striking Unity of Considered Views

The twenty-five Regional Group Conferences held throughout the United States and Canada, in December through March, revealed a remarkable agreement in the considered views of more than six hundred judges, teachers and practitioners of law. A most heartening unity was shown to exist among the legal profession in English- and French-speaking North America.

By a great preponderance the opinion was shown to be:

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- 1. That an international court of justice should form an integral part of the United Nations Organization.
- 2. That this court should be the Permanent Court of International Justice, with such adaptation of its Statute as may be required by the supplanting of the League of Nations.
- 3. That every effort should be made to extend the compulsory jurisdiction of the Court with reference to legal disputes.
- 4. That the scope of international law should be broadened, and its authority strengthened, in launching a new general international organization.

A more detailed summary of the combined "weights" of the Conferences follows this statement. The recommendations of the two Committees, upon these and other aspects of the Dumbarton Oakes Proposals, will be made in due course. Although the members of the Committees and both Associa-

tions are deeply interested in all phases of the pending Proposals, it has seemed to be advisable to confine the present statement to matters pertaining to the World Court and to international law, on which the considered opinion of the lawyers may be immediately helpful to those dealing with the subject.

March 22, 1945

WENDELL B. FARRIS

Chairman of the Canadian Bar Association Committee on Legal Problems of International Organization for the Maintenance of Peace

WILLIAM L. RANSOM

Chairman of the American Bar Association Committee to Report as to Proposals for the Organization of the Nations for Peace and Law

The Manner in Which the "Weight" of Each Meeting Was Ascertained and the Over-All Consenus Was Compiled

Coöperating in a joint effort, the American and Canadian Bar Associations organized a series of Regional Group Conferences of representative members of the profession, for an intensive study of the legal questions presented by the Dumbarton Oaks Proposals. Eighteen such Conferences were held under the auspices of the American Bar Association, in cities throughout the United States; and seven such Conferences have been held under the auspices of the Canadian Bar Association, in different regions of the Dominion.

Outline of the Plan Followed

An attendance ranging from 25 to 30 lawyers proved to be a practicable group for study and discussion. The attendance was usually within that range and average. The participants were in each instance selected by the local conveners, who had been designated by the respective Committees. Each participant was supplied in advance with a documentation of the matters to be discussed. With one exception, a whole day was devoted to each Conference. In some instances, preliminary sessions for study and discussion had been held.

The questions which were submitted in relation to the Dumbarton Oaks Proposals had been drafted after wide consultation with men of both official and unofficial status. They became the agenda of each of the Regional Group Conferences, with special formulations added in Canada in the light of its situation and experience.

The discussion at all of the American Conferences, and at three of the Canadian Conferences, was led by Judge Manley O. Hudson, Judge of the Permanent Court of International Justice, who was accompanied by his collaborator, Mr. Louis B. Sohn. At the request of the Canadian-Committee, a representative of the American Bar Association Committee was present at all but one of the Conferences in Canada.

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The "Weight" of each Meeting

Following extended general discussion, the questions were taken up seriatim and the views of those present were ascertained by going around the table and giving everyone present an opportunity to express his views.

The prevailing views were recorded at the time, and the record was checked with the conveners and usually with others present. Individual views or votes were not recorded. It was made clear that no one need feel bound by the views which he expressed. On questions on which there was a substantial division, no "weight" of that meeting was recorded. As the Conferences were held at intervals over a period of about three months, the "weights" may have reflected to some extent the progress in the public discussions of the Dumbarton Oaks Proposals.

With one or two exceptions, no Conference had before it the "weights" of any other Conference, until after the views in that group had been expressed.

Variances of view there were, of course, within the groups and between some of them, in the meetings held in widely separated parts of the two countries. Significant variances or minority views are noted in the summaries. Taken as a whole, the recorded "weights" of the twenty-five Conferences showed a striking unity in the views, when they were combined into the consensus which follows, in the form of summaries as to the specific questions considered.

Summary of Specific Conclusions of the Regional Groups

1. Importance of an International Court of Justice

Every Regional Group, in the United States and Canada, was of the opinion that an international court of justice is greatly needed, and that it should constitute the judicial organ of the United Nations Organization. No exception was taken to the characterization of the court as "the principal judicial organ of the Organization" (Dumbarton Oaks Proposals, Chapter VII, Par. 1). Yet the need for such a court is so imperative and the task of placing the court on a firm and solid basis is so great that none of the Regional Groups favored undertaking at this time the creation of additional or subordinate judicial tribunals.

2. The Statute as a Part of the Charter

All Regional Groups approved the provisions in the Dumbarton Oaks Proposals (Chapter VII, Par. 2) that the statute of the court "should be annexed to and be a part of the Charter of the Organization." Though it was appreciated that an independent statute might have some advantages and a minority view in some groups was not averse to this, the opinion prevailing in all groups was that an international court will be more useful if it has the active and continuous support of the general Organization and that this

result may be better assured if the court is integrated with other institutions of the Organization as contemplated in Chapter IV of the Dumbarton Oaks Proposals. The judicial independence of the court as a coördinate branch can be assured, it was generally believed, without separating the Statute from the Charter. An international court cannot function in a vacuum, and its fortunes will necessarily be tied in with those of the general Organization. Integration would seem to be more consistent, also, if the election of the judges, the financial maintenance of the court, etc., are to be provided for within the framework of the Organization.

3. Retention of the Present Statute with Modifications

The Regional Groups expressed a decided preference for the *first* of the two alternatives which are stated in Paragraph 3 of Chapter VII of the Dumbarton Oaks Proposals. The consensus was strongly—in most of the groups unanimous—that the statute of the court should be "(a) the Statute of the Permanent Court of International Justice continued in force with such modifications as may be desirable," rather than "(b) a new statute in the preparation of which the Statute of the Permanent Court of International Justice should be used as a basis."

Many of the American groups added that "fully appreciating the importance of agreement with other Governments, the group ventures to express the hope that the full influence of the Government of the United States will be exercised in favor of continuing the existing Court." Nine of the American groups said, however, that "if the choice had to be between no court and alternative (b), the latter should be accepted." In at least one Canadian meeting in March, those present felt preponderantly that with their then hopeful outlook, they were not greatly concerned with the mechanics of the situation as between (a) and (b), above, provided that continuity with the past is maintained, at least the existing jurisdiction of the court is continued, and existing rights and obligations under treaties are preserved.

4. Reasons for Retaining the Statute

The Regional Groups (with the one exception) were of the opinion that vastly different consequences would flow from the decision as to which of the two courses suggested as to the Statute would be followed; and they were moved to favor the retention of the present Statute because of considerations which are summarized as follows:

(a) When agreement was achieved on the Statute of the existing Court, on December 16, 1920, many years of continuous effort came to fruition. The achievement was the more notable because of the lamentable failure at The Hague in 1907. The Protocol to which the Statute was annexed has been signed and ratified by

fifty-one states of the world; and almost all of the states now existing—in fact all except Nepal, Saudi Arabia, Vatican City State, and Yemen—have become parties to international instruments which confer jurisdiction on or otherwise relate to the existing Court. Several hundreds of such instruments continue to be in force despite the war. Some of these instruments are of recent date; e.g., the Chicago Civil Aviation Agreements, which were drafted and promulgated after the issuance of the Dumbarton Oaks Proposals on October 7, 1944. The preservation of this vast body of conventional law—a generation of effort would be required for its reconstruction if it were abolished—would seem to be a desideratum of first importance, and this is possible only if continuity is maintained. A "new statute" would jeopardize, even if it did not interrupt, the continuity.

- (b) The Statute of the existing Court supplies solutions, which on the whole are quite satisfactory, of issues debated over many decades. The preparation of a "new statute" might reopen many of these issues, and there can be no guarantee that new solutions given to them would be as satisfactory or as generally acceptable.
- (c) The existing Permanent Court of International Justice has accumulated a valuable experience under the existing Statute. The Court functioned with astonishing success over a period of eighteen years—from 1922 to 1940. Sixty-five cases came before it during this period, and the Court's handling of them produced a general satisfaction throughout the world. Such criticism as took place concerning its judgments and opinions was not more than that which may be expected as to any like public institution. In no case did a litigant state offer objection to the procedure followed. Advantage of the accumulated experience will, it was thought by the groups, be assured better by continuing in force the existing Statute to which the precedents relate than by launching a new statute.
- (d) The Court is in its twenty-third year, and is in a position to resume its activity if and when the world situation will permit. Its premises in the Peace Palace at The Hague are intact; its President and Registrar carry on their duties from Geneva; its budget for 1944 was duly alimented, and a budget for 1945 has been adopted. The twelve judges who continue in office are available for the discharge of their functions until their successors are chosen.

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(e) Participants in the Regional Groups were cognizant, however, that the continuance of the existing Statute with necessary modifications, and the retention of the existing Court as an institution, do not involve the continuance of the present membership of the Court. There are three vacancies in the Court. The normal terms of all members expired in 1939; they remain in office under a provision in the Statute that "they shall continue to discharge their duties until their places have been filled." New nominations and elections for all places will in any event be required. Whether or not the existing Statute and the Court as an institution are retained, the United Nations Organization will start with a free hand in the selection of the judges.

5. Modifications of the Existing Statute

Each of the Regional Groups studied and discussed in considerable detail "such modifications as may be desirable" (Dumbarton Oaks Proposals, Chapter VII, Par. 3) if the Governments decide to continue in force the Statute of the Permanent Court of International Justice. It was felt that these particularly are questions on which the judgment and experience of the jurists, teachers and practitioners participating in the conferences may be useful to those dealing with the subject.

It was recognized that some modifications of the Statute will be necessary if the League of Nations is supplanted by a new Organization; e.g., the substitution, in appropriate places, of references to the United Nations Organization, its General Assembly, and its Security Council. The Regional Groups were each of the view, with virtual unanimity, that "desirable," as distinguished from necessary, modifications should at present be kept at the minimum. Specifically, the considered judgment of the Regional Groups is stated further in the paragraphs following.

6. Nomination and Election of Judges

The conclusion was general, throughout the Regional Groups, that no changes should be made in the present system of selecting the judges of the The method of nominating candidates in the elections has worked well and has produced generally satisfactory results. It has the advantages that it avoids premature commitments by Governments, and that it accords to national groups in each country the privilege of expressing preferences as to candidates from other countries. The conduct of the elections by the Assembly and Council of the League of Nations, with the collaboration of representatives of parties to the Statute which were not members of the League of Nations, has worked smoothly on eleven occasions. It should be continued, with the substitution of the General Assembly for the League Assembly and of the Security Council for the League Council, the two electoral bodies to continue the practice of meeting and voting separately but at the same time.

The consensus was strongly to the effect that the judges should continue to be without representative character in the sense that they should not be

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regarded as representatives of the states whose nationality they possess. This was one of the more important of the gains registered in 1920.

Some of the groups considered the advisability of fixing a maximum age of eligibility for nomination and election to the Court, and perhaps an age for compulsory retirement of the judges; but the view usually prevailing was that rigid provisions on these matters might unduly restrict the discretion of electors and prevent the choice of some highly desirable jurists.

7. Continuance of Advisory Opinions

The Regional Groups came definitely to the conclusion that advisory opinions should be continued, and that the term "advice" used in Paragraph 6 of Section A of Chapter VIII of the Dumbarton Oaks Proposals should not be substituted for the term "advisory opinion" which is employed in the present Statute. The opinion was that both the General Assembly and the Security Council should be empowered to request advisory opinions from the Court, and that other agencies or bodies desiring to do so should proceed through one of these two channels.

From thorough discussion, the view strongly prevailing was that requests for an advisory opinion should be authorized with reference to any legal question, but that the Court should remain free to decline to give such an opinion if it deems that course to be necessary. Some of the Regional Groups considered also the nature of the vote to be required for adopting a request for an advisory opinion, but this point was usually thought to depend upon more general decisions as to voting:

8. Regional and Special Chambers of the Court

The Regional Groups approved without exception a current proposal that the Court should be given power to create regional or special chambers as need may be shown to exist, such chambers to hear and decide cases where the parties consent. Accessibility of the Court and the convenience of litigants were stressed by some members of the groups. The Court's Chamber for Summary Procedure has given two judgments, but its Chamber for labor cases and its Chamber for communications and transit cases have never been called upon to function. The experience would seem to indicate that it may not be possible to foresee the precise type of Chamber which may be needed, and the decision may best be left to the power of the Court itself. The possibility of regional Chambers might facilitate states' access to the Court, since a Chamber could meet in any part of the world more readily than could the Court en banc. Yet the need for such a Chamber should depend on the desires of the states in the region, and it should be left to the Court to evaluate and act on any such desires as may be expressed.

9. Amendment of the Statute

Most of the Regional Groups—not all of them considered this subject—expressed the view that the Statute should provide the method for its own

amendment, and that a procedure of amendment should be adopted which would not require the consent of all of the parties to the Statute, except possibly an amendment to extend compulsory jurisdiction. The opinion was expressed and favored in some of the groups that procedure for amending the Statute might be worked out so as to parallel generally the method of amendment which is decided on as to the Charter.

10. Other Provisions Desirable for Retention in a New Statute

None of the Regional Groups expressed dissatisfaction with the present Statute of the Court in regard to such matters as the Court's name, its seat, the number and qualifications of judges, and the procedure prescribed.

The various Regional Groups studied in some detail the special features of the existing Statute which ought to be retained, even if the Governments should decide to undertake the preparation of a new statute. With general agreement it was thought that, in addition to the matters already discussed above, the following should in either event be stressed:

- (a) Access to the court—as distinguished from jurisdiction—should continue to be open to all states, whether or not they are members of the new Organization and whether or not they are parties to the court's statute. In advisory proceedings, public and private international organizations should continue to be permitted to appear for the purpose of supplying information.
- (b) A party before the court should continue to be entitled to select a judge ad hoc when the elected judges include no person of its nationality. In view of the experience of a century and a half, it was deemed doubtful whether a statute would be generally acceptable without such a provision. Moreover, the presence of judges ad hoc may tend to facilitate the deliberations of the court, and may better assure the acceptance, by states and their peoples, of judgments adverse to their contentions.
- (c) Judges of the court should continue, in the view of all Regional Groups in the United States, to be permitted to express their individual opinions, in dissent or in concurrence. These Regional Groups did not fear that the authority of the court's judgments would be weakened by dissenting opinions. In some of the groups in Canada, there was a strong minority view in opposition to giving sanction for dissenting opinions.
- (d) No change should be made in the statute's provision for meeting the court's expenses, beyond that they should be borne by the new Organization instead of the League of Nations.

11. Broadened Jurisdiction for the Court

The Regional Groups without exception concerned themselves actively with questions as to the jurisdiction of the Court and the practicable ways of

strengthening and broadening it. The consensus in all groups was that in implementing Chapter VII of the Dumbarton Oaks Proposals, the optional provision for compulsory jurisdiction, as embodied in Article 36 of the Statute of the Permanent Court of International Justice, should as a minimum be fully maintained; and most of the groups expressed themselves most earnestly that ways of extending the jurisdiction of the Court should also be explored and found. Some of the groups in the United States added their belief that their country should, at the least, make a declaration, under the optional clause, accepting compulsory jurisdiction over all legal disputes. The Dominion of Canada took that action fifteen years ago.

Retention of the optional provision in Article 36 would make possible further extensions of the Court's compulsory jurisdiction from time to time, through new declarations and agreements which may be made, or through the broadening of some of those which are now in force between nations. most all of the Regional Groups came to the conviction, however, that the revitalizing of international law requires a present advance beyond the optional clause in the present Statute. While the participants appreciated the extent of the departure which this might involve for some states, they felt strongly that after a second World War within a generation, the world is prepared now to go further than was thought practicable in 1920. the failure to adopt the recommendation of a compulsory jurisdiction advanced by the Committee of Jurists which drafted the Statute of the Permanent Court of International Justice, forty-five of the fifty-one states which ratified the Statute have made declarations accepting the compulsory jurisdiction described in its Article 36. Some of the declarations were for limited periods of time, and some were subject to reservations. larations of twenty-seven states are now in force. In a number of cases, the Permanent Court of International Justice exercised, with no untoward results, the obligatory jurisdiction thus conferred.

In view of this progress since 1920, a large majority of the Regional Groups expressed the hope that all of the states parties to the Court Statute, or at least all of the states which are parties to the Charter, will confer on the Court jurisdiction over their legal disputes, to be exercisable on the application of any party to the dispute. Some of the Regional Groups suggested the desirability of limiting such jurisdiction to future disputes with respect to situations or facts arising in the future.

12. Definition of Classes of Legal Disputes

The Regional Groups generally thought it desirable to maintain the provision in Article 36 of the Statute of the Permanent Court of International Justice which defines the classes of legal disputes to which the compulsory jurisdiction which may be conferred would be applicable. It was recognized that this definition furnishes no test of adjudicability; it merely delimits the conferred jurisdiction. Although the experience to date has not been ex-

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tensive, it has seemed to indicate that the definition is not unsatisfactory for that purpose. The groups foresaw that the functioning of the new Organization and the court, and the making of new agreements between the nations, would operate to broaden the category of "legal disputes," even as thus far defined.

13. Determination of the Existence of Aggression

The Regional Groups which considered the subject were nearly unanimous in a present view that in the existing state of international law "the determination of the existence of aggression is a political question," and that "the Court should not be given any rôle in that determination, except where the Security Council requests an advisory opinion on a legal question connected with such a determination."

14. Disputes Arising out of "Domestic Matters"

Most of the Regional Groups which took a "weight" on the subject expressed the view that the exception of disputes arising out of "domestic matters," as contained in Paragraph 7 of Section A of Chapter VIII of the Dumbarton Oaks Proposals, is not sufficiently limited. The exception made in the Covenant was only of disputes "found by the Council to arise" out of domestic matters. When an exception of domestic matters was made by Canada and other states in declarations under Article 36 of the Statute of the Permanent Court of International Justice, it was subject to application by the Court. The consensus was that the Dumbarton Oaks Proposals will be strengthened if the exception can be made applicable only to action by the Security Council, and if it can be limited to disputes found by the Security Council to arise out of domestic matters.

15. Enforcement of Court Judgments

The Regional Groups were unanimously of the opinion that the Charter should contain a provision looking toward the enforcement of judgments of the Court, if compliance were refused or withheld. It was recognized that the Court's judicial function would be exhausted with its rendition of a judgment; enforcement of the judgment raises questions which properly fall within the competence of a body such as the Security Council. States have habitually accepted and complied with the judgments of international tribunals, and it was deemed to be reassuring that no judgment of the Permanent Court of International Justice has ever been flouted. Yet a few instances of non-compliance with arbitral awards have arisen in the past; in the future, a similar non-compliance with judgments of the Court might have the effect of undermining confidence in the processes of law and order.

The consensus was that the Charter might well contain a provision, modeled on that in Article 13 of the Covenant, that the Security Council be empowered, in the event of any failure by a state to carry out a judgment of

the Court, to make recommendations or decide upon the measures to be taken to give effect to the judgment.

An earnest belief was voiced in many of the groups, made definite in a "weight" taken in one group (Denver) upon its initiative, that "if the habit of compliance with the mandates of an international court can once be established, most of the obstacles to an international organization along the general lines of the Dumbarton Oaks Proposals will in time disappear or take care of themselves."

16. Parties to the Statute

The Regional Groups which gave specific attention to the problems as to the states which should be permitted to be parties to the Statute of the Court were disposed to welcome the indication, in Paragraph 5 of Chapter VII of the Dumbarton Oaks Proposals, that membership in the new Organization will not be a condition precedent to a state's joining in the maintenance and support of the Court. It was recognized that if the Governments decide to continue in force the Statute of the Permanent Court of International Justice, a problem may arise with reference to some of the states which are now parties to the Statute but which may not enter the new Organization.

With reference to states such as Portugal and Sweden and Switzerland, it was deemed to be improbable that there would be a desire to set significant conditions to their continuing to be parties to the Statute, and the Regional Groups were generally of the opinion that the provisions as to conditions (Dumbarton Oaks Proposals, Chapter VII, Par. 5) should not apply to their relationship to the Court.

With reference to states such as Germany and Japan, the majority opinion in some of the groups favored the application of that paragraph as to conditions. Other groups took the view that universality of submission to the Court is such a desirable goal that no special conditions should be applicable to the support of the Court by these states. The opinion in the groups in the United States divided on this issue more than on any other; in some instances, no "weight" was ascertainable.

Whether the existing Statute is continued in force or a new statute is adopted, a problem may also arise with reference to states which may be expelled from the Organization under the provision in Paragraph 3 of Section B of Chapter V of the Dumbarton Oaks Proposals. Some of the Regional Groups which considered the question—not all of them did—favored the application to such states of the provision for conditions as stated in Paragraph 5 of Chapter VII. Some of the Regional Groups did not favor the idea of expulsion from the Court, and some did not favor the application of conditions in any event.

Responsive to the opinion in the group meetings under its auspices, the general Committee in Canada felt that if the idea of expulsion from the Organization is accepted, a nation so expelled should nevertheless be subject to and bound by the rulings of the Court.

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17. Permanent Court of Arbitration

The Regional Groups in Canada were generally of the opinion that the Permanent Court of Arbitration should be continued in being, and that The Hague Conventions on Pacific Settlement should be amended to facilitate accession by states such as Canada which are not now parties to either of the Conventions. It was thought that this course would be in line with the emphasis, in Section A of Chapter VIII of the Dumbarton Oaks Proposals, on means of settlement of the parties' own choice, and that its adoption would be proper in continuing the present method of nominating candidates in the elections of judges of the Court. The groups in the United States did not directly consider these questions, except as they favored the continuance of the present method of nominating judges.

18. The Scope of International Law

The Regional Groups were generally of the opinion that both the scope and the authority of international law need to be broadened. Some of the disputes which are now regarded as non-legal and non-adjudicable should be brought within the reach of law and within the ambit of the judicial process. This emphasis was particularly manifest in the Regional Group meetings in Canada, which were disposed to stress the importance of international legislation through multipartite conventions. All of the Regional Groups looked forward to a significant extension of international law as resulting from the cumulation of the jurisprudence of a functioning court.

In general, also, the Regional Groups were of the opinion that the authority of international law will be strengthened if prominent emphasis is given to the concepts of law and justice in the Charter of the new Organization; and in this connection the hope was expressed that the Charter will make specific provision for continuous attention to be given to the place and rôle of law in an organized world.

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RELIEF PENDENTE LITE IN THE PERMANENT COURT OF INTERNATIONAL JUSTICE

By EDWARD DUMBAULD

Special Assistant to the Attorney General, United States Department of Justice

In a noteworthy decision, rendered after the outbreak of the present war, relief pendente lite was granted by the Permanent Court of International Justice (as distinguished from its President) for the first time since the Court was established. A review of recent developments affecting that aspect of the administration of international justice according to law will therefore be timely.

Recent Decisions of the Court

1. Southeastern Greenland case.

The Court first had occasion, within the period covered by this article, to pass upon a question involving an application for relief *pendente lite* in the dispute between Norway and Denmark regarding Southeastern Greenland.³

Norway by a Royal Decree of July 12, 1932, had declared its sovereignty over the contested territory, and six days later filed suit praying the Court to uphold the legality of that occupation, and also "to order the Danish Government, as an interim measure of protection, to abstain in the said territory from any coercive measure directed against Norwegian nationals." The Danish government had admittedly invested the leader of a Danish expedi-

- ¹ Rendered December 5, 1939 in the case of the Electricity Company of Sofia and Bulgaria. Publications of the Permanent Court of International Justice, Series A/B, no. 79. (Publications of the Court will hereinafter be cited simply by their letters and numbers.)
- *The subject of this article was treated by the author in his Interim Measures of Protection in International Controversies, 1932, pp. 144-173. Later literature includes: Hans G. Niemeyer, Einstweilige Verfügungen des Weltgerichtshofs, ihr Wesen und ihre Grenzen, 1932 (reviewed in this Journal, Vol. 27 (1933), pp. 198-199); Paul Guggenheim, Les Mesures conservatoires dans la Procédure arbitrale et judiciare, Académie de Droit international de la Haye, Recueil des Cours, Vol. 40 (1932), pp. 649-761; Henri A. Rolin, Force obligatoire des Ordonnances de la Cour permanente de Justice internationale en matière de Mesures conservatoires, in Mélanges offerts à Ernest Mahaim, 1935, Vol. II, pp. 280-298; Åke Hammarskjöld, Quelques Aspects de la Question des Mesures conservatoires en Droit international positif, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, Vol. 5 (1935), pp. 5-33; Giancarlo Venturini, Le misure cautelari nel diritto internazionale, in Archivio giuridico Filippo Serafini. Vol. 119 (1938), pp. 40-89, 152-182. The present article supplements the author's earlier work on the subject by surveying developments from 1932 to date.
 - ² Publication A/B no. 48, pp. 277-289.
- 'Same, p. 278. Denmark filed suit against Norway the same day, praying that the Norwegian occupation be declared illegal, and reserving the right to apply for interim protection, but no such application was ever made: pp. 279-80. The two proceedings were consolidated by the Court's order of August 2, 1932: p. 271.

tion to the territory with police powers, to be exercised not only over Danish subjects but also over Norwegian subjects; and, according to statements in Danish newspapers, there was reason to fear acts of violence against Norwegian occupants of the territory.5 Norway had also conferred police powers upon one of the members of a Norwegian expedition in the territory. It was asserted by Norway, but denied by Denmark, that frequent contact between Norwegians and Danes would be inevitable. According to Danish contentions, the territory was so vast in area, and its occupants so few in number, that contacts between the Danish authorities and Norwegian subjects would be rare and accidental.7

Since this was the first case which had come before the Court under Rule 57 as revised in 1931,8 several interesting procedural questions received The Court continued its former practice of embodying its consideration. decision in the form of an order, rather than a judgment. The Court also decided, on July 22, 1932, "to admit, for the purposes of the proceedings on the Norwegian request for the indication of interim measures of protection, the judges ad hoc duly appointed by the Parties, 'having regard to the fact that in this case the presence of judges ad hoc is not inconsistent with the urgent nature of interim measures of protection." 10 Another question regarding the Court's personnel arose when one of the Judges wished to know "whether he could take part in the proceedings upon the request for interim measures of protection, even though he were prevented by circumstances from taking part subsequently in the hearing of the case on its merits. Court held that there was nothing to prevent the judge in question from tak-

- ⁵ Same, p. 278.
- Same, p. 283. Norway agreed that the Court might defer its decision on the Norwegian request for interim protection "should the Danish Government inform the Court that it will not adopt coercive measures"; and that the request should be understood as contemplating indication of measures of interim protection applicable equally to both parties. Same, pp. 278, 282.
 - ⁷ Same, p. 283.
 - * Rule 57, in the version adopted on February 21, 1931, provided:

Une requête adressée à la Cour par les parties ou par l'une d'entre elles en vue de mesures conservatoires, a la priorité sur toutes autres affaires. Il est statué d'urgence et, si la Cour ne siège pas, elle est à cette fin convoquée sans retard par le Président.

En l'absence d'une requête, si la Cour ne siège pas, le Président peut convoquer la Cour pour lui soumettre la question de l'opportunité de semblables mesures.

Dans tous les cas, la Cour n'indique des mesures conservatoires qu'après avoir donné aux parties la possibilité de faire entendre leurs observations à ce sujet.

- Dumbauld, work cited, p. 159. Before adoption of the 1931 version of Rule 57, indication of interim measures could be made without a hearing, and by the President if the Court was not sitting. After 1931 these procedural reasons no longer prevented the use of judgments, but the Court continued to prefer orders. "The reason for the Court's decision to employ the form of an order appears to be that measures of protection are essentially provisional in character, whereas judgments are final decisions." Moreover, "measures of protection may be indicated by the Court proprio motu, whereas this would not be possible in the case of a judgment." E no. 9, 171.
 - ¹⁰ Publication A/B no. 48, p. 280. See also E no. 9, p. 162.

ing part in the proceedings in regard to the question of interim measures of protection, since those proceedings were distinct from the proceedings on the merits." 11

The Court found it unnecessary to decide whether it had power to indicate interim measures of protection when there was no controversy pending before it, other than the application for interim measures itself, since in the case at bar such a controversy had been submitted for adjudication.¹²

The Court likewise found it unnecessary to determine whether its power to grant relief pendente lite extended only to protection of the rights of the parties to a dispute, or whether it could also be exercised to preserve the status quo "for the sole purpose of preventing regrettable events and unfortunate incidents" which might aggravate or extend the dispute.¹³

However, it was expressly decided that "the Court is satisfied that it may proceed to indicate interim measures of protection at the request of the Parties (or of one of them) and proprio motu" but that "the Norwegian request for interim measures of protection must first be examined, leaving the question whether measures should if necessary be indicated proprio motu to be determined subsequently." ¹⁴

Upon consideration of the merits of the Norwegian request, the Court ruled that there was no need for indication of interim protection. Since the territorial dispute had already been submitted to the Court for adjudication, no measures thereafter taken by either of the parties could better the position of either claimant or have any legal effect on the status of the territory as ultimately determined by the Court's decision on the merits of the controversy. Likewise the occurrence of hostile incidents could not affect adversely, or in any way prejudice, such rights as the Court might finally recognize as belonging to Norway. Besides, the Court regarded it as altogether unlikely that any such events would actually occur, both parties having in open court made declarations of their intentions to refrain from such conduct.

¹¹ Publication E no. 9, pp. 164-5.

¹² Publication A/B no. 48, pp. 283-4. See Dumbauld, p. 155; Hudson, The Permanent Court of International Justice, 1934, p. 416. Paragraph 1 of Rule 61, as adopted on March 11, 1936, now specifies that an application for interim protection may be made only in connection with a pending case.

¹³ Publication A/B no. 48, p. 284. Judges Negulesco and Schücking had previously indicated their acceptance of the broader view of the Court's power. Publication D no. 2, 2nd addendum, pp. 192–3; Dumbauld, pp. 26, 28–9, 187. The Court later reached the same conclusion, in the case of the Electricity Company of Sofia and Bulgaria, Publication A/B no. 79, p. 199. See note 53, below.

¹⁸ Same, p. 285. See McNutt v. General Motors Corporation, 298 U. S. 178, 181 (1936).
¹⁷ Same, pp. 285, 287. Dumbauld, p. 159. The Court also drew attention to the fact that in 1931 in another part of Eastern Greenland nationals of the two countries, respectively invested by their governments with police powers, were simultaneously present, without the occurrence of any "incidents." Publication A/B no. 48, p. 283.

The same reasons convinced the Court that it should refrain from granting any interlocutory relief ex proprio motu. In view of the statement made on behalf of the Danish government that it did "not intend, as long as the case is pending before the Court, to take any measures that are calculated to change the legal status of the territory which is the subject of the case," and of the similar statement made on behalf of the Norwegian government; and since, in any event,

having regard to the character of the alleged rights in question, considered in relation to the natural characteristics of the territory in issue, even "measures calculated to change the legal status of the territory" could not, according to the information now at the Court's disposal, affect the value of such alleged rights, once the Court in its judgment on the merits had recognized them as appertaining to one or other of the Parties, and as, in any case, the consequences of such measures would not, in point of fact, be irreparable; Whereas, moreover, both Parties are bound by the "General Act for Conciliation, Judicial Settlement and Arbitration" signed at Geneva on September 26, 1928; as by the terms of paragraph 3 of Article 33 of the said Act, "the Parties undertake" in particular "to abstain from measures likely to aggravate or extend the dispute"; as the interpretation and application of that clause are subject to the compulsory jurisdiction of the Court; and as, in consequence, in the event of any infringement of these alleged rights, a legal remedy would be available, even independently of the acceptance by the Parties of the optional clause 18 referred to in Article 36, paragraph 2, of the Statute,

the Court concluded that there was no occasion for the indication of interim measures of protection ex officio.¹⁹

Accordingly, the Court by its order of August 3, 1932, dismissed the Norwegian request, reserving the right, however, to consider at a later date the question whether circumstances might then require indication of interim measures of protection in accordance with Article 41 of the Statute.

2. The administration of the Prince of Pless.

The Court again dealt with the question of interim measures of protection in the case concerning the administration of the Prince of Pless.²⁰ This was a dispute between Germany and Poland, involving a tax controversy. While

¹⁸ The Court is here referring to the established principle that where infraction of a party's rights can be adequately redressed by pecuniary compensation, and the Court has power under the Optional Clause to award such redress, the availability of that legal remedy renders unnecessary the indication of interim measures of protection under Article 41 of the Statute. *Publication A* no. 8, p. 7; Dumbauld, pp. 149–150, 163, 165–6.

Where Article 33 of the General Act applies, however, the legal remedy other than interim measures under Article 41 of the Statute may itself consist precisely in appropriate relief pendente lite which the Court is empowered by Article 33 of the Act to award. In such a case the Court is endowed with a separate and additional jurisdiction to grant interlocutory relief, quite apart from its jurisdiction under Article 41 of the Statute.

 the dispute was pending before the Court, the taxpayer suddenly received from the Polish tax authorities a demand for payment. Germany applied to the Court for relief.²¹

On May 5, 1933, the President of the Court, Judge Adatci, telegraphed to the Polish minister of foreign affairs suggesting the desirability of suspending any coercive measures against the taxpayer until after the Court could meet and render its decision.²² The Polish government replied that the demand for payment had been made inadvertently, by an official unfamiliar with the case, and that no measures of coercion would be resorted to pending the Court's decision.²³ The German government indicated its approval of this declaration.²⁴ Accordingly, the Court in its order of May 11, 1933, took note of these circumstances, and stated that, since the German demand had thus become moot, there was no occasion for the Court to pass upon the application for interim relief, either as to jurisdiction or merits.²⁵

3. The Polish Agrarian Reform and the German Minority.

The next instance in which the Court was called upon to consider the subject of interlocutory relief arose in connection with the case concerning the Polish Agrarian Reform and the German Minority.²⁶

Poland's obligations with respect to minorities were prescribed by its treaty with the Allies, signed at Versailles on June 28, 1919; and were placed under the guarantee of the League of Nations by Article 12 of that treaty. Article 12 further provided that any Member of the Council of the League of Nations should have the right to bring to the attention of the Council any infraction or any danger of infraction by Poland of any of these obligations, and that any Member of the League should have the right to refer to the Court any difference of opinion with Poland as to questions of law or fact arising out of the articles regarding treatment of minorities.

- ¹¹ Publication C no. 70, pp. 202-3. The German application, dated May 2, 1933 and delivered to the Court on the following day, prayed the Court "to indicate to the Polish Government, as an interim measure of protection, pending the delivery of judgment upon the Application of May 18, 1932, that it should abstain from any measure of constraint in respect of the property of the Prince von Pless, on account of income-tax." Publication A/B no. 54, p. 151.
- ¹⁰ Bu égard ce qui précède ainsi que esprit du Statut et autres actes internationaux concernant règlement pacifique différends acceptés par Pologne me permets suggérer Votre Excellence opportunité examiner possibilité arrêter mesures coercition éventuelles contre Pless en attendant réunion Cour prévue pour date non postérieure à 15 mai courant et en attendant que Cour ait pu statuer, Publication C no. 70, pp. 429–430.
 - ²¹ Publication C no. 70, pp. 431-432.
- ²⁴ Same, p. 432.
- In thus explicitly distinguishing the questions of jurisdiction and merits in the proceeding for indication of interim measures from the questions of jurisdiction and merits in the principal litigation, the Court acted in accordance with the doctrine that the proceedings in which a claim for relief *pendente lite* is asserted constitute a separate and independent cause of action. Dumbauld, p. 19. See notes 11, above, and 64, below.
 - ** Publication A/B no. 58, pp. 175-188.

Germany, as a Member of the League of Nations, on July 3, 1933, submitted to the Court, in accordance with the third paragraph of Article 12, a controversy regarding the Polish agrarian reforms as applied to the German minority in Poland. The Court was asked to decide that violations of the treaty "have been committed to the detriment of Polish nationals of German race and to order reparation to be made." ²⁷ On the same day an application for interim protection was filed, requesting the Court "to indicate interim measures of protection in order to preserve the status quo" until the Court's final judgment was rendered. ²⁸

The acting President of the Court, Judge Guerrero, designated July 11, 1933, as the date for hearing, but the Polish government announced that it would not be ready by that time.²⁹ When the Court met on the appointed day,³⁰ it postponed the hearing until July 19, 1933,³¹ after permitting the German agent, Professor Viktor Bruns, to make a declaration opposing such action.²²

During the course of argument at the hearing, in response to a question by Judge Anzilotti, the German agent stated that it was not the Polish agrarian law per se, but its discriminatory application, which was the basis of Germany's complaint.³³ The Polish agent, Sobolewski, argued that it was the provisions of the minorities treaty, not the minorities themselves, that were placed under international guarantee; and contended that in litigation under Article 12 of the treaty Germany was acting solely in its capacity as a Member of the League of Nations, and hence had no rights of its own which could form the subject matter of measures of interim protection.²⁴ The point was

- **Publication C no. 71, p. 11. Germany had previously, in accordance with the second paragraph of Article 12, referred the dispute to the Council of the League of Nations on January 19, 1932: same, p. 12. Not satisfied with the solution proposed on December 9, 1932, by a committee which had carefully studied the matter, Germany announced on February 1, 1933, its intention of submitting the controversy to the Court. Same, pp. 96-126. See also Publication A/B no. 58, pp. 184-5.
- ²⁸ Publication C no. 71, 11-14. As interpreted by the German agent at the oral argument, this request contemplated that, with respect to members of the German minority, Poland should not commence or continue expropriations, or transfer to other persons estates taken from them, or establish settlers upon such estates. Same, pp. 36, 45; Publication, A/B no. 58, p. 178.
- ²⁹ For the correspondence between the Registrar of the Court and the Polish Minister at The Hague regarding the date of the hearing, see *Publication C* no. 71, pp. 136–7, 140–141, 142–144, 144–5, 146, 147.
- ⁹⁰ On July 10, 1933, at a private meeting the Court discussed: (1) whether the Court was obliged to hear observations of the parties; (2) whether the provisions of Article 53 of the Statute, regarding default, would apply if only one party were to be heard; (3) whether adjournment is permissible in urgent matters. Without deciding the first two questions, the Court determined to hold the public sitting scheduled for the next day and there adjourn, without hearing the observations of the German agent, who was, however, permitted to make a declaration. *Publication* E no. 14, p. 143.
 - ²¹ The hearing was held on July 19, 20, and 21, 1933. *Publication* C no. 71, pp. 19–22.
 ²² Same, pp. 17–18.
 ²³ Same, p. 21.
 ²⁴ Same, p. 40.

also made that the German complaint related to past transactions, and that future acts of the Polish government therefore could not prejudice any rights in dispute before the Court.**

On July 29, 1933, the Court issued an order denying relief.³⁶ The majority opinion was concurred in by Judges Adatci, Guerrero, Rostworowski, Fromageot, Urrutia, Hurst, Negulesco, and Wang. Three dissenting opinions were written; by Judge Rolin-Jacquemyns, by Judge Anzilotti, and by Judges Schücking and van Eysinga, respectively.

According to the majority view, "the essential condition which must necessarily be fulfilled in order to justify a request for the indication of interim measures, should circumstances require them, is that such measures should have the effect of protecting the rights forming the subject of the dispute submitted to the Court." ⁸⁷ In the case at bar, however, the Court had been asked by Germany, in the complaint filed in the principal suit, to find that there had been an infraction of Poland's obligations under the minorities treaty, and to award reparation therefor; but the request for interim measures of protection, on the other hand, sought to enjoin all future violations arising from application of the Polish agrarian laws. To grant the relief requested would produce a general suspension of the application of those laws, "and cannot therefore be regarded as solely designed to protect the subject of the dispute and the actual object of the principal claim. . .." ³⁸

Therefore, without having to consider the scope of Article 12 of the Treaty of Versailles as regards indication of interim measures of protection, or the expediency in other cases of acting ex proprio motu, and without prejudging the principal suit either as to jurisdiction or merits, the Court confined its decision to the narrow holding that the application before the Court for interim measures of protection was not in conformity with the provisions of the Statute. The German request was accordingly dismissed.²⁹

Judge Rolin-Jacquemyns in his dissenting opinion said that indication of interim protection would facilitate reparation for violated rights by their preservation in specie rather than by compensation for their loss.⁴⁰

Judge Anzilotti made the preliminary observation that, in general, if there was ever a proper case for relief *pendente lite* it was the case at bar. He went on to say:

Apart from all questions relating to the interpretation of Article 12 of the Treaty of June 28th, 1919, for the protection of Minorities, the only reason which, in my view, made it impossible for the Court to grant the German Government's request, in the present state of the proceedings,

^{*}Same, p. 42. Dumbauld, pp. 28, 164. *Publication C no. 71, pp. 22-23.

³⁷ Publication A/B no. 58, p. 177.

³⁸ In the French: . . . ne peuvent pas être considérées comme tendant uniquement à sauvegarder l'objet du différend et l'objet de la demande principale elle-même, tels qu'ils sont soumis à la Cour par la requête introductive d'instance. Same, p. 178.

³⁹ Same, pp. 178-9.

⁴⁰ Same, p. 180.

^{si} Same, p. 181.

was the uncertainty which the Application instituting the main proceedings allows to subsist as to what the said Government seeks to obtain from the Court, and, in consequence, as to the extent of any rights

which the interim measures would have to protect.

In the opinion of the Court, the proceedings instituted by the German Government were designed to obtain a declaration that certain alleged infractions of the Treaty had been committed in individual cases, in applying the agrarian reform law, and, further, to obtain reparation for the said infractions; such is indeed the impression conveyed—at any rate, at first sight—by the wording used in the Application to indicate the object of the claim: "to declare that violations of the Treaty of June 28th, 1919, have been committed to the detriment of Polish nationals of German race, and to order reparation to be made." If that is really so. it is manifest that the interim measures applied for would go far beyond the limits of the right that is in dispute. Interim measures of protection . would certainly have been possible and expedient; but they would need to have been confined to the individual cases which the German Government had in mind. And since neither the Application, nor the request for the indication of interim measures, made it possible to ascertain which were these cases, the Court found itself unable, in practice, to indicate the measures as requested.

But was that really the meaning of the German Application? Was not its intention rather to obtain from the Court a declaratory judgment, to the effect that the Polish Government's conduct in the application of the agrarian reform law was not consistent with its obligations under the Treaty of June 28th, 1919? In other words, the issue is not—or is not only—this or that violation of the Treaty committed to the detriment of this or of that Polish citizen of German race; the issue is the whole body of acts by which the Polish authorities have applied the agrarian reform law; and it is the inconsistency of the attitude, resulting from this whole body of acts, with the Treaty of June 28, 1919, that the Court is asked to declare. If such was the object of the claim in the German Government's Application, it is quite comprehensible that it should have asked—as an interim measure of protection—that the application of the agrarian reform to Polish citizens of German race, in

general, should be suspended.

I am inclined to think that that is really the meaning of the Ap-

plication; . . .

But I must admit that the German Government's Application is open to different interpretations, and this in regard to a point on which perfect clarity is essential. As it is only fair that a government should bear the consequences of the wording of a document for which it is responsible, I could readily understand that the Court should, on that ground, refuse to grant the request for interim measures of protection. This, however, should not prejudice the German Government's right to submit a fresh application indicating the subject of the suit with the necessary clearness and precision, and to follow it up by a fresh request for the indication of interim measures appropriate to the rights claimed.⁴²

Judges Schücking and van Eysinga regarded the subject of the dispute as being the same as that which had been previously under consideration by the Council of the League of Nations, i.e. Poland's entire course of conduct.

They agreed with Judge Rolin-Jacquemyns in his view that relief pendente lite would facilitate reparation by preservation rather than by compensation.44 They also believed that the situation warranted indication of interim measures of protection by the Court ex proprio motu.44 They furthermore took the view that before deciding one way or the other the Court was obliged to determine whether there can be interim measures of protection in a case brought by a Member of the League of Nations under paragraph 3 of Article 12 of the Minorities Treaty. While disagreeing with the Polish contention denying the possibility of such measures in a case of that kind, they deemed it unnecessary to discuss that point in detail.45

4. The Electricity Company of Sofia and Bulgaria.

The most recent case decided by the Court in connection with interim protection was that regarding the Electricity Company of Sofia and Bulgaria.46 This was the first case to come before the Court under Rule 61 as adopted in 1936,47 and was also the first case in which the Court (as distinguished from its President) has ever granted relief pendente lite. The Court's order of December 5, 1939, required Bulgaria to "ensure that no step of any kind is taken capable of prejudicing the rights claimed by the Belgian government or of aggravating or extending the dispute submitted to the Court" by the Belgian application of January 26, 1938.

The dispute arose out of a rate controversy between a Belgian electric company and the Bulgarian municipality which it served. A previous application for interim protection had been made in the same case on July 2, 1938. Belgium had requested that compulsory execution against the elec-

- 46 Publication A/B no. 79, pp. 194-200. "Same, p. 187. 45 Same, pp. 187-8. ⁴⁷ Rule 61 provides (Publication D no. 1, 3d ed., 1936, pp. 48-49):
- 1. A request for the indication of interim measures of protection may be filed at any time during the proceedings in the case in connection with which it is made. The request shall specify the case to which it relates, the rights to be protected and the interim measures of which the indication is proposed.

2. A request for the indication of interim measures of protection shall have priority over all other cases. The decision thereon shall be treated as a matter of urgency.

3. If the Court is not sitting, the members shall be convened by the President forthwith. Pending the meeting of the Court and a decision by it, the President shall, if need be, take such measures as may appear to him necessary in order to enable the Court to give an effective decision.

4. The Court may indicate interim measures of protection other than those proposed in the

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- 5. The rejection of a request for the indication of interim measures of protection shall not prevent the party which has made it from making a fresh request in the same case based on new facts.
- 6. The Court may indicate interim measures of protection proprio motu. If the Court is not sitting, the President may convene the members in order to submit to the Court the question whether it is expedient to indicate such measures. 7. The Court may at any time by reason of a change in the situation revoke or modify its

decision indicating interim measures of protection.

- 8. The Court shall only indicate interim measures of protection after giving the parties an opportunity of presenting their observations on the subject. The same rule applies when the Court revokes or modifies a decision indicating such measures.
- 9. When the President has occasion to convene the members of the Court, judges who have been appointed under Article 31 of the Statute of the Court shall be convened if their presence can be assured at the date fixed by the President for hearing the parties.

tric company by virtue of proceedings in the Bulgarian courts be postponed until after the Court had rendered its judgment in the case pending before it. This request was withdrawn in view of statements contained in the Bulgarian agent's telegram of July 27, 1938, to the President of the Court.⁴⁸

On October 17, 1939, a second request for interim protection was made, reciting that a petitory action in the Bulgarian courts had been commenced against the company. A suit of this character was the very step which in 1938 had been declared to be a condition precedent to the exercise of any coercion or execution against the company, the earlier proceeding in the Bulgarian courts having been of a purely declaratory nature.⁴⁹ The Belgian request for interim relief prayed that the petitory suit against the company in the Belgian courts be suspended until after the Court had rendered its decision on the merits of the case pending before it.⁵⁰

At the hearing on December 4, 1939, the Belgian agent was present. The Bulgarian agent announced, in his telegram of November 18, 1939, that because of the war he would not be able to attend. He stated, however, that there were many reasons why the relief requested by Belgium should not be granted, but that under the circumstances, the Bulgarian government did not consider itself bound to present observations.⁵¹

In interpreting Article 41 of the Statute, the Court in its order of December 5, 1939, said: 50

Whereas the above quoted provision of the Statute applies the principle universally accepted by international tribunals and likewise laid down in many conventions to which Bulgaria has been a party—to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not to allow any step of any kind to be taken which might aggravate or extend the dispute; Whereas, in this case, present conditions and the successive postponements and resulting delays and, finally, the action as demandant above mentioned, justify in the view of the Court the indication of interim measures calculated to prevent, for the duration of the proceedings before the Court, the per-

- ⁴⁸ Publication A/B no. 77, pp. 64–155. The Belgian agent in his letter of August 26, 1938 informed the Court that the Belgian government withdrew the request for interim protection. On August 27, 1938 the President of the Court made an order to that effect. Same, pp. 66–67.
 - 49 Publication A/B no. 79, pp. 196, 198-9.
- ⁵⁰ Same, p. 196. The Court pointed out that under Rule 61, paragraph 4, the Court may indicate measures other than those prayed for. Same, p. 199.
- as Same, p. 197. The Bulgarian Judge ad hoc likewise announced, in his telegram of November 25, 1939, that it was impossible for him to come to The Hague for the hearing. Same, p. 197. The Court's action in this case amounts to a decision that the Court is not required by Rule 61 to hear the observations of the parties, but is merely required to give them an opportunity to be heard. See notes 30, above, and 89, below. Perhaps the telegram of November 18, 1939, constituted a waiver of any right on the part of Bulgaria to be heard before the Court granted relief.
 - ⁵⁵ Same, p. 199.

formance of acts likely to prejudice, for either of the Parties to the case or for the interests concerned, the respective rights which may result from the impending judgment; For these reasons, The Court, indicates as an interim measure, that pending the final judgment of the Court in the suit submitted by the Belgian Application on January 26, 1938, the State of Bulgaria should ensure that no step of any kind is taken capable of prejudicing the rights claimed by the Belgian government or of aggravating or extending the dispute submitted to the Court.

The views thus expressed by the Court regarding the scope of interim protection under Article 41 of the Statute seem to go far beyond the narrower interpretations previously enunciated in the Southeastern Greenland case and in the case concerning the Polish Agrarian Reform and the German Minority. In those cases, as has been seen above, the Court did not undertake to prevent action which might aggravate or extend the dispute submitted to the Court, but claimed nothing more than the power to prevent action which might irreparably prejudice the particular rights asserted in the litigation pending before the Court. ⁵³

Revised Rules of the Court

The 1931 version of Rule 57 was superseded by the present Rule 61 when revised Rules of Court were adopted on March 11, 1936. This revision was undertaken in order to bring the Rules into harmony with the Statute as modified by the amendments which went into effect on February 1, 1936. For several years the Court had devoted a great deal of time and thought to the task of revising its Rules. In this connection Rule 57 received attention in the report submitted in 1933 by the Registrar of the Court, the learned Swedish jurist Åke Hammarskjöld. Consideration of that Rule became part of the assignment referred to the "Third Commission" under the plan followed by the Court in organizing its work on the Rules.

- See notes 13 and 38 above.
- "The Registrar raised the question whether it would be desirable to go back to the pre-1931 practice (under which the President was empowered to indicate interim measures of protection when the Court was not sitting), or to sanction the method which the President of the Court had used in the Prince of Pless case. "Without indicating interim measures having the effect attributed to them by the statute, the President drew the attention of the government concerned to the desirability of taking steps to avoid prejudging the Court's future decision on the request for an indication of interim measures." Publication D no. 2, 3rd addendum, pp. 827-8.
- ** Four such committees, composed of Judges of the Court, were set up in 1931. There was also established a "Commission of Coordination" composed of the rapporteurs of each committee plus the President of the Court. Same, p. 857. The Third Commission was composed of Judges Anzilotti, van Eysinga, and Urrutia. On August 11, 1932, Judge van Eysinga was chosen as rapporteur. On December 13, 1933, Judge Anzilotti proposed that President Adatci, who had not been attending Commission meetings, be invited to sit with the Third Commission, since its assignment included interim measures, au sujet desquelles le Président a eu l'occasion d'acquérir une expérience particulière durant les trois années qui viennent de s'écouler. Same, p. 858.

The Third Commission's report on interim measures of protection was submitted by Judge van Eysinga on March 14, 1934. The Third Commission approved and adopted the position taken by President Adatci in the Prince of Pless case. Under that solution it is the full Court that decides on the indication of interim measures of protection, and when the Court is not sitting the President must convoke it without delay; but meanwhile he may indicate all "provisional measures" which appear to him to be advisable. On March 16, 1934 the Court discussed the Third Commission's report, but postponed taking any action with respect to amendment of Rule 57.57

The Commission of Coördination (on the basis of the Third Commission's report, amendments thereto by the Court during its 31st session, and the ideas submitted by members of the Court before May 1, 1934 ⁵⁸), in its report ⁵⁹ of May 13, 1934, prepared a comprehensive and detailed text, ⁵⁰ which was discussed by the Court in 1935. ⁶¹ Paragraph 3 of that text contained a provision empowering the President to act in place of the Court, but only if the Court is not sitting and the President considers that it can not be convoked in time to render an effective decision. ⁵² The Commission's report expresses the opinion that the exercise of such power by the President is not contrary to Article 41 of the Statute, although nothing is said about him in that article; for likewise Article 48 of the Statute, relating to the rendition of orders, mentions only the Court, but it has always been held that the President may make orders. ⁶³

Several Judges expressed emphatic disapproval of the plan proposed by the Commission of Coördination, permitting the President to act in the place

- ⁵⁵ The Third Commission's text was substantially identical with the 1931 Rule, except for the insertion of the new provision, in the second paragraph, that En attendant que la Cour se réunisse et statue définitivement sur la requête, le Président a le pouvoir d'indiquer toutes mesures provisoires qui lui paratiront opportunes. Same, pp. 778–9.
 - ¹⁷ Same, pp. 850-2.
- 55 Judge Kellogg wrote on April 4, 1934, disapproving the requirement that the whole Court meet in order to indicate interim measures. Same, p. 907. On April 23, 1934, Judge Rostworowski submitted a substitute for the Third Commission's text, together with a memorandum in support of his proposal. Same, pp. 910-11, 911-13. Sir Cecil Hurst, President of the Court, also commented on the Third Commission's report in a memorandum dated May 3, 1934. Same, pp. 898, 903-4.
- a Discussion continued from February 18 to February 21, 1935. Same, pp. 279–303. It is impossible to determine from the published minutes whether or not the Court considers that interim protection is available in cases where an advisory opinion is to be rendered by the Court. The text proposed by the Commission of Coördination expressly applied to any proceeding, contentious or advisory, affaire contentieuse ou consultative. Same, pp. 875, 890. However, the wording was later changed, although no action by the Court so amending the text is disclosed by the minutes. Same, pp. 279, 302.
- Esi, lors de la présentation de la demands, la Cour ne siège pas, et si, eu égard aux circonstances du cas d'espèce, le Président estime qu'elle ne peut être réunie dans un délai lui permettant de statuer utilement, il statue à ses lieu et place.
 - ⁴³ Same, p. 876.

and stead of the Court.⁶⁴ When a vote was taken, the Court decided that the President should not be given such power.⁶⁵ Nevertheless, it was recognized as desirable that the President should be authorized to take measures ensuring that when the Court met it would not find itself confronted with some event which would make its meeting entirely purposeless and its decision ineffective. Accordingly, language was inserted which was similar in substance to the Third Commission's proposal, recognizing the precedent of Judge Adatci's action in the Prince of Pless case.⁶⁶

On February 21, 1935, the text proposed by the Commission of Coördination, as it had been amended by the Court, was adopted unanimously, subject to review by the drafting committee.⁶⁷ Rule 61, as embodied in the drafting committee's version of March 30, 1935, ⁶⁸ was then accepted by the Court on April 8, 1935, with one modification in the wording of the French version, ⁶⁹ and the Rules were adopted on first reading on April 10, 1935. ⁷⁰ With minor changes, Rule 61 was adopted on second reading on February 25, 1936. ⁷¹ Several slight changes were also made when the Rule was adopted on third reading on March 11, 1936. ⁷² The final vote on adoption of the Rules was taken on the same day and they were adopted by a vote of 8 to 2. ⁷³

- ⁶⁴ Judges Rostworowski and Urrutia contended that such delegation of power was contrary to the Statute. Same, pp. 282, 287. Judge Guerrero believed that such a delicate political function should not be entrusted to the President. Same, pp. 282, 286. Judge Rostworowski agreed that it was undesirable for the President to have diplomatic powers, since the Court was a judicial body and the procedure for indication of interim measures was contentious. Same, p. 289. (See his previous view that such procedure constituted a separate judicial function, neither contentious nor advisory. Same, pp. 281, 850, 911.) Likewise Judge Negulesco asserted that acceptance of the Commission's proposal would give the President power to decide a contentious case. Same, p. 285. Judge van Eysinga shared the view that interim protection is an incident de la procedure contentiouse rather than a third function. Same, p. 281. Judge Anzilotti took a similar view. Same, pp. 852, 559. See notes 11 and 25, above.
- ⁶⁶ A vote on the question, "Does the Court desire that the rules shall empower the President, pending the meeting of the Court, to indicate interim measures of protection in conformity with Article 41 of the statute?" resulted in a tie (Judges van Eysinga, Schücking, Anzilotti, Altamira and Hurst in the affirmative; Judges Negulesco, Urrutia, Rostworowski, Rolin-Jacquemyns and Guerrero opposed); and the President gave his casting vote in favor of the status quo. Same, p. 289.
- ⁶⁶ Same, pp. 287, 288, 290, 291. There was some doubt as to whether the President's action in that case did or did not constitute indication of interim measures of protection. Same, pp. 285, 288, 290.
- ⁴⁷ Same, p. 303. Several amendments to the Commission's text were adopted, in addition to those which have been discussed above. Same, pp. 293, 295, 297–300.
- ⁶⁸ Same, p. 936. In addition to clarifications in wording, the drafting committee changed the order of paragraphs, and apparently also added a sentence, making applicable to the revocation or modification of the decision indicating interim measures the same requirements as to hearing which are prescribed for the original indication of such measures.
 - ⁶⁹ Same, p. 440.

- ⁷⁰ Same, pp. 959-60.
- ⁿ Same, pp. 635-41, 990.
- ⁷³ Same, pp. 732-33.
- ²³ Same, pp. 746, 1014-15. Judges Anzilotti and van Eysinga were of the opinion that under the revised Statute (Article 23) the Court is always sitting, and that therefore the

Developments in the Court's Procedure and Practice

As the result of the above decisions and provisions of the Rules of Court, several developments in the Court's practice and procedure with respect to indication of interim measures of protection must be noted:⁷⁴

1. Although indication of interim measures of protection is made by the full Court and not by the President, the President may, if need be, when the Court is not sitting, "take such measures as may appear to him necessary in order to enable the Court to give an effective decision." ⁷⁵

The effect of this innovation in Rule 61 is to empower the President to grant relief pendente lite of a second order. The "measures" taken by him stand in the same relation to the "interim measures of protection" authorized by Article 41 of the Statute as the latter type of measures do to the final relief afforded to litigants by the Court's decision on the merits of controversies submitted to it for adjudication. The object of each type of measures is "to enable the Court to give an effective decision" in a succeeding state of the litigation. ⁷⁶

2. The Court may indicate interim measures of protection ex proprio motu as well as upon application by the parties or by one of them.⁷⁷

If a request is made by a party, the Court will first examine such request, "leaving the question whether measures should if necessary be indicated proprio motu to be determined subsequently." 78

- 3. A request for the indication of interim measures of protection may be made at any time during the proceedings in the case in connection with which it is made.⁷⁹ However, if a previous request has been rejected by the Court, the party making it should not make a new request in the same case without new facts on which to base it.⁸⁹ Moreover, the Court may at any time by reason of a change in the situation revoke or modify its decision indicating interim measures of protection.⁸¹
- 4. A request for the indication of iterim measures of protection must specify the case to which it relates, the rights to be protected, and the measures proposed.⁸²

Rules should not say that the President may do certain things "if the Court is not sitting." Same, pp. 744, 745.

⁷⁸ Publication A/B no. 48, 284.

⁷⁴ Except as here specified, the analysis contained in Dumbauld, pp. 154-173, remains applicable.

¹⁷ The express provision to this effect in Rule 61, paragraph 6, merely codifies previous doctrine and practice. Dumbauld, p. 155; *Publication A/B* no. 48, p. 284.

⁷⁹ Rule 61, paragraph 1. In the Southeastern Greenland case the Court found it unnecessary to decide whether it had power to indicate interim measures of protection when there was no case pending before it other than the application for interim measures of protection itself. *Publication A/B* no, 48, pp. 283–4. See note 12, above, and *Publication D* no. 2, 3rd addendum, pp. 280, 912.

^{*} Rule 61, paragraph 5. * Rule 61, paragraph 7.

²² Rule 61, paragraph 1. Dumbauld, p. 157.

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- 5. The Court may indicate measures other than those proposed in the request.⁸²
- 6. The measures which the Court is empowered to indicate under Article 41 of the Statute may have as their object not merely the preservation of rights of the parties, but also the prevention of steps capable of aggravating or extending the dispute submitted to the Court.⁸⁴
- 7. National Judges ad hoc may participate in proceedings for the indication of interim measures of protection if their presence can be assured at the date set for the hearing, and their participation thus does not conflict with the urgent nature of such proceedings. The same individual need not serve as national Judge ad hoc throughout all stages of a case, and a Judge may take part in the proceedings relating to interim measures of protection although he is not able to sit subsequently at the hearing of the case on its merits. St
- 8. Before indicating interim measures of protection, the Court must give the parties an opportunity to present their observations on the subject. The same rule applies when the Court revokes or modifies a decision indicating interim measures of protection.⁸⁷

This requirement contemplates an opportunity for oral argument in open court, rather than merely for submission of written observations.⁸⁸ But if a party fails to take advantage of the opportunity afforded, and is not represented in court upon the date set for hearing argument, the Court may proceed to grant relief *pendente lite* notwithstanding the *ex parte* character of the proceedings under those circumstances.⁸⁹

- This is expressly provided in Rule 61, paragraph 4. It would follow also from the Court's power to indicate measures proprio motu. See Publication D no. 2, 3rd addendum, pp. 294-5. Moreover in any event Article 41 is explicit in empowering the Court, when passing upon a request by one party to a dispute, to protect the rights of the other party as well. Dumbauld, p. 156; Publication D no. 2, 3rd addendum, p. 294.
- ⁵⁴ Publication A/B no. 79, p. 199. See Publication A/B no. 48, p. 284; Dumbauld, pp. 26, 187. See note 53 above.
- ⁸⁸ Rule 61, paragraph 9; *Publication A/B* no. 48, p. 280; *Publication E* no. 9, p. 162. See Dumbauld, p. 157.
 - * Publication E no. 9, pp. 164-5; Publication D no. 2, 3rd addendum, pp. 291-4.
- ⁸⁷ Rule 61, paragraph 8. Refusal to indicate measures need not be preceded by hearing. *Publication* A no. 12; Dumbauld, p. 158.
- ³⁸ The President of the Court so interpreted the requirement in the Prince of Pless case. *Publication D no. 2*, 3rd addendum, p. 827. Cf. the Third Commission's proposal: p. 779.
- **On July 10, 1933, in the case concerning the Polish Agrarian Reform and the German Minority, when one party failed to appear and present its observations on the date fixed for the hearing, the Court decided, over objection, to postpone the hearing: Publication E no. 14, p. 143; Publication C no. 71, pp. 17–18. Dumbauld, p. 161. Postponement was also granted, without objection, in the case of the first application by Belgium for interim protection in the case regarding the Electricity Company of Sofia and Bulgaria. Publication A/B no. 77, pp. 66–7. Upon the second application in that case, the Court, on December 5, 1939, granted interim protection although the Bulgarian agent had not been able to attend the hearing: Publication A/B no. 79, pp. 197, 199.

THE ALEXANDRETTA DISPUTE

By MAJID KHADDURI

Associate Professor, Baghdad Higher Teachers College

1. Introduction

The Franco-Turkish dispute over the Sanjak of Alexandretta presents another notable case of the consequences of the acceptance of an imperfect settlement at Lausanne between the Allies and Turkey following the first World War. The most important dispute that arose from the Lausanne settlement related to the Vilayat of Mosul, a district comprising the whole northern section of Iraq and valuable for its oil and strategic position, in which Turkey challenged Great Britain's interests and prestige in Iraq. That dispute was successfully settled by the Council of the League of Nations in 1925 in favour of Iraq.¹ Ten years later another dispute arose from the imperfect settlement of Lausanne which concerned this time Turkey's By then the international situation had deteriorated frontiers with Syria. and the League's prestige was undermined. France, the Mandatory Power for Syria, was in need of Turkey's friendship and consequently her bargaining position was weaker. The dispute was eventually won by Turkey.

Probably neither of these cases would have ever arisen had Great Britain and France realized the inherent difficulties of the situation at the time when they were negotiating peace with Turkey. While it is true that such matters were regarded by the Allies as "minor" issues, compared with the problems of the European settlement, they did reflect, in the way in which they were handled at Lausanne, lack of agreement in Allied policy with regards to Turkey.² The dispute over Mosul was left unsettled owing to the refusal of Turkey to renounce her claims to the district, while France made a generous offer to Turkey in the Ankara Agreement (1921), which not only gave special privileges to the Turkish elements in the Sanjak but also established a special regime there. The Ankara Agreement was confirmed and included in the Treaty of Lausanne of July 24, 1923. Those special privileges and the special regime in the Sanjak were made a cause for further claims by Turkey in the decade that followed the settlement of Lausanne. The Ankara Agreement is of particular significance in the Alexandretta dispute and therefore deserves a closer examination.

2. The Ankara Agreement

It was partly due to internal difficulties in Syria, but mainly to Anglo-French rivalry in the Near East, that France was induced to conclude a

¹ See Quincy Wright, "The Mosul Dispute," in this JOURNAL, Vol. 20 (1926), pp. 453-464.

² Henry H. Cumming, Anglo-French Rivalry in the Near East, Oxford, 1938, Chap. XIII; Harold Nicolson, Curron: The Last Phase, London, 1934, p. 281 and ff.

separate peace agreement with Turkey. The Turks, on the other hand, were in trouble with the Greeks and were anxious to come to terms with France and Italy along the lines of their recent agreement with the Soviet Union. France and Italy, the former Allies of Great Britain, were opposed to Greece, the *protégé* of Great Britain, attaining a victory over the Turks and thus extending Anglo-Greek influence to the Aegean Sea and Asia Minor.

Under such circumstances negotiations began in June, 1921, between M. Franklin-Bouillon, a member of the French Chamber of Deputies, and Mustapha Kemal. Franklin-Bouillon's first visit to Turkey was apparently personal, but when negotiations began to materialize, his second visit was made semi-official. When the news of these meetings reached the British Foreign Office Lord Curzon inquired about the Franklin-Bouillon Mission but M. Briand, the French Foreign Minister, replied, on July 14, 1921, that the purpose was to negotiate a tractation locale which had no bearing with the larger question of peace with Turkey. Contrary to Briand's contention a separate peace agreement was signed in Ankara on October 20, 1921, which settled matters of joint concern to France and Turkey.

The Ankara Agreement stipulated that "the high contracting parties declare that . . . the state of war between them shall cease" (Art. 1), and fixed the frontier between Turkey and Syria along a line starting on the gulf of Alexandretta immediately to the south of Payas, leaving the town and locality of Maidan-Ekbes to Syria, then running east and south, leaving the town of Killis to Turkey and finally following the Baghdad Railway until it joins the Tigris at Jezirat Ibn-Umar (Art. 8). Thus France ceded to Turkey over 18,000 square kilometres more territory than had been specified by the Treaty of Sèvres (August 10, 1920). With regards to the Sanjak of Alexandretta, Article 7 stipulated that: ⁵

A special administrative regime shall be established for the district of Alexandretta. The Turkish inhabitants of this district shall enjoy facility for their cultural development. The Turkish language shall have official recognition.

The Ankara Agreement was confirmed by the Treaty of Lausanne and became part of the general peace settlement with Turkey.

³ Speech delivered by Ghazi Mustapha Kemal in October, 1927, published in Leipzig in 1929, pp. 523-527; John Bell, "Peace-Making in the East," in *Fortnightly Review*, Vol. 112, N.S. (1922), p. 891.

⁴ H. W. V. Temperley (ed.), *History of the Peace Conference of Paris*, London, 1924, Vol. VI, p., 33; Cumming, work cited, p. 141.

⁴a See text of the agreement in Temperley, work cited, Vol. VI, pp. 606-608.

⁵ The population of the Sanjak of Alexandretta, according to the official French estimate, is 220,000; 87,000 of them are Turks. According to an unofficial French estimate, the total population is 153,798; the Turks constitute from 35 to 40 per cent of the total. See Paul Jacquot, Antioch, Beyrouth, 1931, Vol. I, p. 29.

⁶ Treaty of Peace with Turkey and other Instruments, in Great Britain, Treaty Series, No. 16 (1923), Cmd. 1929, London, 1923, p. 15.

In order to carry out the provisions of the Ankara Agreement, the French High Commissioner in Syria issued an arrêté on March 4, 1923, by virtue of which the Sanjak of Alexandretta was attached to the state of Aleppo, but had its own council and a special budget prepared by its *Mutasarrif* (governor). The budget, however, had to be submitted for its final approval to the state council of Aleppo. A delegate of the High Commissioner whose duty was to advise the Mutasarrif ⁷ was appointed to reside in Alexandretta.

The final delimitation of the frontiers did not begin until September, 1925, when a commission began the work. Circumstances were by then more favourable to the Turks. They had finally liquidated the Kurdish revolt, while a more serious revolt had just been started in Syria by Druze and Syrian nationalists.8 This induced the Turks to put fresh claims before the commission, such as that the Payas railway station should be included within Turkish territory, but the commission replied that these claims were beyond its capacity, and that its function was merely to delimit the frontiers on the ground. The commission actually suspended its work and its members returned home. When, however, M. de Jouvenel, the new French High Commissioner, arrived in Syria, he at once saw the necessity of solving the frontier dispute and thus putting an end to the periodic raids of the Turkish irregulars. M. de Jouvenel went in person to Ankara in February, 1926, where he reached an agreement with Dr. Tewfik Rushdi (now Rüstü Aras), the Turkish Foreign Minister, which they initialled on February 18, 1926. On May 30, 1926, the agreement was signed and ratified on August 12, 1926.

Despite this settlement, when the commission of delimitation set to work another controversy arose as to the location of an "old road" which was held by the Turkish member of the commission to be to the south, and to the French member was to the north of the proposed boundary. A majority vote of the members did not settle the issue, and negotiations took place again between Ankara and Paris. Agreement was eventually reached on June 22, 1929, by dividing the disputed area between Turkey and Syria, leaving one-fifth to Turkey and the rest to Syria. This settlement, however, was by no means final between Turkey and Syria; other claims were put forward at what their proponents regarded as opportune times.

3. Direct Negotiations

Between 1929 and 1936 no grounds arose on which Turkey could make a fresh claim. But Turkey never failed to impress the inhabitants of the Sanjak of Alexandretta that she paid special attention to the development

League of Nations, Minutes of the Permanent Mandates Commission, Fifth Session, p. 101; Arnold J. Toynbee, Survey of International Affairs, 1925, Oxford, 1927, Vol. 1, p. 458.

⁸ Q. Wright, "The Bombardment of Damascus," in this JOURNAL, Vol. 20 (1926), pp. 263-280; M. Khadduri, The Syrian Question, Mosul, 1934, p. 111 and ff.

Arnold J. Toynbee, Survey of International Affairs, 1928, Oxford, 1929, pp. 332-333; Survey of International Affairs, 1930, Oxford, 1931, pp. 314-316.

of Turkish culture there. Turkish students from the Sanjak were invited to study in Turkey at the Turkish Government's expense. On April 27, 1934, the Turkish Wali of Aintab ¹⁰ paid an official visit to the Sanjak of Alexandretta and was received with much excitement and enthusiasm by the Turks there. Such activities were interpreted by the Arabs as preliminary steps to annexation and provoked continued fear among them.

The opportune moment came when the Syrians concluded the Franco-Syrian Treaty of Septmber 9, 1936, by virtue of which Syria was promised the termination of the mandate and independence. Turkey kept silent while Syria was negotiating with France, but before the treaty was ratified she re-opened the problem of Alexandretta. When General Nuri al-Said, Iraq's Foreign Minister, passed through Istanbul on his way to Geneva, Ismet Inönü, then Turkish Prime Minister, found time to discuss with him, in the presence of Sayid Naji Shawkat, Iraq's Minister to Turkey, the problem of Alexandretta. Ismet Inönü is reported to have said: 13

We are glad to hear that the French and Syrian Governments have finally reached a solution of the Syrian question, and we are glad to see Syria shortly winning her independence as Iraq has already. But I would like to draw your attention to the problem of Alexandretta, a final solution to which is in the interests of both Syria and Turkey. We have not raised this issue during the Franco-Syrian negotiations so as not to prejudice the course of the negotiations. We are ready to solve it by direct negotiations between ourselves and Syria.

Ismet Inōnü expressed to General Nuri al-Said his hope that the Syrian Delegation, which was returning to Syria from Paris, would pass through Turkey for negotiations.

The Syrian Delegation had already decided to pass through Turkey. During its two-day stay at Istanbul the Delegation discussed the problem of Alexandretta with the Turkish Foreign Minister, but only in a general way. The Turks were surprised at the timidity of the Syrian Delegation and its disinclination to enter into direct negotiations. All that the Turks obtained was a statement by the head of the Delegation, Sayid Hashim al-Atasi, in which he declared that "the Turks of Alexandretta will have the same rights and obligations as ourselves." This obviously was not what the Turks had expected, though it was only wishful thinking by the Turks to expect the Syrian Delegation to enter into direct negotiations with them. The Syrian Delegation, as a matter of fact, had no power to negotiate with Turkey, since it had been appointed for the sole purpose of negotiating the Franco-Syrian treaty. Secondly, Syria was still under the mandate; and as such Syria's

¹⁰ A Turkish province adjacent to the Sanjak of Alexandretta.

¹¹ Paul de Veou, Désastre d'Alexandrette, Paris, 1938, p. 47.

¹² Based on this writer's interviews with Arabs of the Sanjak of Alexandretta.

¹³ Reported to the writer by Sayid Naji Shawkat, the Iraqi Minister to Turkey.

¹⁴ Same

foreign relations were exclusively controlled by France as its Mandatory Power.¹⁸

No sooner had the Syrian Delegation left Turkish soil than a campaign began in the Turkish press and radio against the "tyranny" of Franco-Syrian rule in the Sanjak of Alexandretta. The President of the Turkish Republic, Kemal Atatürk, referred to Alexandretta in his inaugural speech to the Grand National Assembly on November 1, 1936, in the following terms: 16

The important topic of the day, which is absorbing the whole attention of the Turkish people, is the fate of the district of Alexandretta, Antioch and its dependencies, which in point of fact belongs to the purist Turkish element. We are obliged to take up this matter seriously and firmly.

Dr. Aras, the Turkish Foreign Minister and the accredited representative at the Council of the League of Nations, raised the problem of Alexandretta by referring to it at the session of the League Council on September 26, 1936, and requested that "the Turkish Government [be given] an opportunity to engage in friendly conversation on that matter with the French Government." M. Viénot, the French Under-Secretary of State for Foreign Affairs and accredited representative at the League Council, replied on October 6, 1936, when, referring to the conversations with Dr. Aras, he said that 18

the Franco-Syrian Treaty, though modelled on that between the United Kingdom and Iraq, contained special provisions for safeguarding both the minorities which were concentrated in certain districts and those which were scattered over the whole territory of the State of the Levant . . . , should the Turkish Government wish to use this opportunity for redefining the system of autonomous government at present in force in the Alexandretta district, or even to formulate any new demand which it might deem necessary, France would be prepared to enter into negotiations, provided always that they come within the framework of the 1921 agreements.

Direct negotiations between Ankara and Paris began on October 10, 1936, when M. Suad Davaz, the Turkish Ambassador to France, handed a Note to the French Ministry for Foreign Affairs, requesting the French Government 19

to take the necessary steps with a view to deciding whether it would not be advisable for the French Government to conclude with . . . Alex-

¹⁵ Art. 3 of the Mandate for Syria and the Lebanon. See also Quincy Wright, Mandates Under the League of Nations (Chicago, 1930), p. 122.

¹⁶ La Question d'Alexandrette et d'Antioch (Ankara, 1936), I, p. 20; League of Nations, Official Journal (January, 1937), p. 42.

¹⁷ League of Nations, Official Journal (November, 1936), p. 1181.

 ^{18 &}quot;First White Book on the Question of Alexandretta and Antioch," in League of Nations,
 Official Journal, January, 1937, p. 41.
 19 Same, pp. 41–42.

andretta and Antioch, a treaty similar to that signed by France with the representatives of Syria. . . .

The Turkish Government contended, adds the Note, that France would be merely acting in accordance with the general spirit of the League Covenant and the Ankara Agreement of 1921.

M. Yvon Delbos, the French Foreign Minister, replied to the Turkish Note on November 10, 1936, reminding the Turkish Government that the statement made by M. Viénot to the Council of the League of Nations was to the effect that "the French Government will not refuse to enter into any negotiations that the Turkish Government may wish to open within the scope of the Agreements of 1921." ²⁰ M. Delbos pointed out that France would not go beyond the terms of that treaty, which only provided for a special administrative status for the Sanjak of Alexandretta. "Nor would it be in the French Government's power," added M. Delbos, ²¹

to use this future emancipation [of Syria] as a pretext for conferring an international status upon any given part of the territory of the two States [Syria and the Lebanon] which it has been made responsible for guiding to independence. By detaching from the Syrian State a Sanjak which belongs to it, and which, under the safeguards of its special status, actually cooperates in the political life of that State; by concluding, with the representatives of that Sanjak, a treaty of alliance analogous to those which are being negotiated with Syria and Lebanon, the French Government would be, both in law and in fact, setting up a third State on the same footing as the first two. Such an action would be tantamount to the dismemberment of Syria—a contingency against which the Mandatory Power is explicitly responsible for safeguarding the Syrian State.

The Turkish Government reasserted its point of view in a more elaborate note which was sent to the French Ministry for Foreign Affairs on November 17, 1936.²² The note gives a survey of the legal development of the status of Alexandretta since it was detached from the Ottoman Empire. The following is a summary of the Turkish arguments:

- 1. When the Treaty of Versailles was concluded, Syria was under military occupation. This could not involve any juridical consequence, as far as Syria was concerned, since the peace treaty with Turkey had not yet been concluded and the transfer of sovereignty from Turkey to any other power depended on the terms of this treaty.
- 2. On April 25, 1920, the Allied Powers concluded at San Remo an agreement conferring on France the mandate over Syria and on Great Britain the mandate over Iraq and Palestine. The geographical expression "Syria" referred to in the San Remo Agreement could not be defined, since the territories detached from Turkey were still juridically undefined.

²⁰ "Second White Book on the Question of Alexandretta and Antioch," in League of Nations, Official Journal, January, 1937, p. 43.

²¹ Same, p. 44.

²² See text of the note in same, pp. 50-51.

3. On October 20, 1921, France concluded an agreement with Turkey in order "to put an end to the state of war and to fix a line of demarcation between Turkey and France's possession." This Agreement was recognized by the Treaty of Lausanne, in which Turkey renounced her sovereignty over the said territories in favour of the "parties concerned" (Art. 16). It followed, therefore, according to the Turkish note, that

as soon as France ceases to exercise authority over Syria, the parties concerned which are to inherit the sovereignty conditionally relinquished by Turkey over the Alexandretta and Antioch districts can only be, under the terms of the two international instruments of 1921 and 1923, the Turkish populations of those districts which are recognised as antonomous within the framework of the authority exercised by France.

The latter part of the Turkish note criticised actions taken by France which were considered by Turkey contrary to the Agreement of 1921 and the Lausanne Treaty, such as the League Council's approval of the draft mandate for Syria and the Lebanon without mentioning the special position of the Sanjak of Alexandretta and the drafting of an Organic Regulation in 1930 for the Sanjak without the knowledge of Turkey.

Realizing that there were no common grounds of agreement, the French Government, in its note of November 30, 1936, suggested that the dispute be referred to the League of Nations.²³ The Turkish Government consented. Accordingly Dr. Aras, the Turkish Foreign Minister, notified the Secretary-General of the League of Nations on December 8, 1936, in a telegram stating that: ²⁴

There exists between Turkey and France a dispute concerning the future of the territories of Alexandretta, Antioch, and dependencies conditionally ceded by Turkey in virtue of the Treaties of 1921 and 1923.

The Secretary-General asked the approval of the French Government, which was given, but pointed out that 25

the question to be submitted to the Council does not in its opinion constitute a Franco-Turkish dispute in which the national interests of the two countries are opposed. This is a case of divergence between a request submitted by the Turkish Government and the doctrine of the mandate as hitherto applied by France in the Levant in accordance with the guiding principles laid down by the council and the mandates commission.

4. The Dispute before the Council of the League of Nations

The League's Council began its discussion of the dispute at its extraordinary meeting on December 14, 1936. Dr. Aras, the Turkish Foreign Min-

²³ "Second White Book" (League of Nations, Official Journal, January, 1937), p. 52.

²⁴ League of Nations, Official Journal (January, 1937), p. 36

[≈] Same, p. 36.

ister and accredited representative, gave an elaborate account on the nature and origins of the dispute.²⁶ He pointed out that there were two problems for the Council to consider. First, the Council should

deliberate on the question of the conservatory measures the adoption of which is essential in view of the painful situation of the Turkish inhabitants of the Sanjak, and . . . should then consider the actual substance of the dispute relating to the future of that district.

Dr. Aras then proceeded to give a brief legal and political development of the dispute. He pointed out that the supreme Council, at San Remo, on April 25, 1920, had conferred upon France a mandate over Syria. Dr. Aras asked,

But what was the area described as "Syria"? and what were its geographical, political and legal aspects? If Syria embraced all the territories which were at that time under the de facto occupation of the French Government, it necessarily included, in addition to the Syro-Lebanese community of Arab speech, the community of Cilicia, which was of Turkish speech and race. If that were the conclusion to be deduced from the San Remo instrument, it would be advisable to ask how, by a subsequent agreement concerning good neighbourly relations, France was able to restore to Turkey territories which had been entrusted to her as mandatory under Article 22 of the covenant of the League of Nations.

Dr. Aras continued to argue that

if the geographical expression "Syria" was not thus unduly extended, how could it be claimed that the mandate, which was conferred in 1920, could apply to territories whose juridical fate was at that time still undecided, like those of the Sanjak of Alexandretta.

Dr. Aras insisted that there was no mandate over the Sanjak when the political frontiers were settled at Lausanne, because Turkey, under Article 16, specified that her renunciation of Turkish sovereignty was not made in favour of a Power acting on its own behalf or as a mandatory, but in favour only of the "parties concerned."

M. Viénot, the accredited French representative, asked to postpone his reply until the meeting on the next day. Meanwhile, the Council appointed M. Sandler, representative of Sweden, as *Rapporteur*.

On December 15, 1936, M. Viénot gave the French observations on the dispute.²⁷ He pointed out that France's legal status in the Levant had been clearly defined at the San Remo Conference when the mandate over Syria and the Lebanon was assigned to her. Those territories entrusted to France were not territories under French sovereignty. France's duty was to prepare them to be fit to exercise full sovereignty and independence. France, accordingly, had to endow these territories with political and administrative organisation and to fix their frontiers. "Dr. Aras argued," says M. Viénot,

See Dr. Aras' speech in League of Nations, Official Journal, January, 1937, pp. 22-23.
 See M. Viénot's speech in League of Nations, Official Journal, January, 1937, pp. 24-29.

"that France's evacuation of Cilicia took place after the assignment of the mandate, and was equivalent to the handing back of territory." Since such abandonment was not allowed by the terms of the mandate, Dr. Aras had concluded that France was not acting as a Mandatory Power. M. Viénot said:

I must point out to the Council, that military occupation is a *de facto* situation, that the limits of such occupation do not constitute a frontier, and that only the determination of the frontier establishes the territorial position that it is the Mandatory Power's duty to guarantee.

The following conclusions were then drawn by M. Viénot: (1) that when France was negotiating with Turkey in 1921 she was acting under her Mandate and had no other qualification to negotiate; (2) that France could not acquire sovereignty over Syria by an agreement the sole purpose of which was to fix the frontier; (3) that France was acting on behalf of the Syrian Community, which at that time was still a congeries of provinces, but provisions for whose constitution into states destined to become ultimately independent had been made as early as June 29, 1919; (4) that the Sanjak of Alexandretta had no special claim to independence apart from the Syrian community to which it belonged. M. Viénot declared,

I am therefore fully convinced that the care taken by France to provide Turkey, in the future as in the past, with the most effective guarantee as to the status of the Turkish elements in the Sanjak cannot fail to strengthen the ties existing between our two countries, . . . the emancipation of Syria [from the Mandate] will in no way affect the special régime of the Sanjak nor the rights enjoyed by the Turkish elements of its population.

On the following day, December 16, 1936, the Rapporteur, M. Sandler, presented to the Council of the League a report and draft resolution, not on the dispute itself, but on the conservatory measures to be taken in the Sanjak during the controversy, in view of the fact that both the representatives of France and Turkey agreed in asking the Council to postpone the question until its next session.

The following is the text of the resolution adopted: 28

The Council,

(1) Noting that the Governments of France and Turkey have agreed to postpone to the Council's ordinary session in January the examination of the substance of the question which has arisen regarding the district of Alexandretta and Antioch, recommends to the two Governments to continue their conversations meanwhile in close contact with the Rapporteur;

(2) Notes the assurances given by the representatives of France and Turkey that they will spare no effort to contribute to a satisfactory

solution of the question;

(3) In response to the request formally made by the French Govern-

²⁸ League of Nations, Official Journal (January, 1937), pp. 31-32.

ment, decides to send as soon as possible to the Sanjak of Alexandretta three observers, with the task defined in the present report;

(4) Requests the President of the Council to appoint the said ob-

servers on the Rapporteur's proposal;

(5) Fixes the end of January 1937 as the maximum time-limit for the observers' mission;

(6) Requests the Secretary-General to provide the observers with the

necessary secretarial staff;

(7) Authorises the Secretary-General, under Rule 33 of the Financial Regulations, to draw if necessary on the working capital fund, up to a maximum of 75,000 Swiss francs, for the sums necessary to cover the expenditure involved by the execution of the present resolution, it being understood that France shall defray this expenditure;

(8) Stipulates that the adoption of the present resolution shall not be regarded as in any way prejudging the substance of the question, which

remains entirely open.

Dr. Aras abstained from voting, because he regarded as insufficient the measures proposed as a whole. He wanted two other observers to be added to the committee, one representing Turkey, and the other representing France. The French representative had already proposed a neutral committee. The Rapporteur's proposal, however, was adopted by the Council.

5. Resumption of Direct Negotiations

In pursuance of the Council's resolution, negotiations were resumed in Paris on December 21, 1936. Turkey, however, had not modified its position, namely, its insistence on setting up an autonomous regime in the Sanjak of Alexandretta. On January 11, 1937, Dr. Aras approached the French Government with a new project; he presented a memorandum with proposals to establish a confederation of Syria, Lebanon, and the Sanjak of Alexandretta, having in common foreign affairs and a monetary and customs union. France was to conclude a treaty of alliance with the new confederation, specifying that the Sanjak of Alexandretta should remain a neutral and demilitarized state.²⁹ This new proposal must have been unpleasant to the French Government, since it raised the question of Syrian unity and revived a project dear to the Syrian nationalists. It is not surprising, therefore, that the project was at once rejected by the French Government.

Until this moment direct negotiations had produced no agreement. When Dr. Aras returned to Ankara and gave a speech at a meeting of the Turkish People's Party on January 5, 1937, dissatisfaction was shown at the slow progress of the negotiations.³⁰ The Turkish Government, accordingly,

¹⁹ Only a summary of the memorandum is published in the Official Journal of the League of Nations (February, 1937, p. 118); the full text is to be found in Werner Frauendienst, Weltgeschichte der Gegenwart in Dokumenten, 1938–1937, Essen, 1938, Band 4, pp. 405–407.

³⁰ Dr. Aras had already given a similar speech on November 27, 1936 (Iskenderon-Antakya Meselesi, No. III, Ankara, 1936, pp. 2-10). See also Arnold J. Toynbee, Survey of International Affairs, 1936, Oxford, 1937, p. 776.

proceeded to supplement her diplomatic pressure by a show of force. On January 6, 1937, President Atatürk left Ankara for Qonyah by special train.³¹ He held a conference on the way, at Eskishehr, with the Prime Minister, the Foreign Minister, the Minister of Interior, and the Chief of the General Staff. On January 7, 1937, President Atatürk passed through Qonyah and reached Uluqyshla, and the rumour was spread that Turkish troops were concentrating on the borders of Alexandretta.³²

This display of force had its reactions in Paris. On the same day that President Atatürk passed through Qonyah the Turkish Ambassador to France had an interview with M. Viénot, French Under-Secretary for Foreign Affairs, in which probably he reaffirmed the Turkish attitude. It should be noted that the international situation was then unfavourable to France. The danger of war in Europe was felt already, and France and Great Britain were in need of Turkish friendship in the Mediterranean to counter-balance the threat of Mussolini. It was therefore not to be wondered at that the French Government was prepared to be accommodating toward the Turkish desires. The French change of attitude resulted in the sudden return of President Atatürk on January 8, 1937, to Ankara and new Turkish proposals were communicated to Paris. Moreover, the proposed meeting of the League Council was postponed from the 18th to the 21st of January at the request of both France and Turkey.

On January 18, 1937, M. Leon Blum, the French Premier, sent a letter to M. Davaz, the Turkish Ambassador to France, in which he worked out a new project comprising both the French and the Turkish points of view.³² The Blum letter made it plain to the Turks that the legal arguments supported the French rather than the Turkish point of view. He therefore suggested that a new solution should be sought through the League Council, since the Council alone had the right to decide on any modification in the status of the Sanjak. He admitted that the position of the Sanjak would be a matter of concern to Turkey if the France-Syrian Treaty came into force. But it was also a matter of concern to France, who had concluded the Ankara Agreement and was still the Mandatory Power over Syria. In that capacity, therefore, M. Blum proposed that a sort of mandatory regime should continue in the Sanjak in the form of a "special regime," under the supervision of the League of Nations through a French High Commissioner to be appointed by the Council of the League of Nations.

The Blum project was obviously a compromise plan which satisfied the Turks by setting up an autonomous regime, including the right to use the port of Alexandretta, and the League and France by retaining mandatory supervision.

⁵¹ Qonyah is the headquarters of the Turkish Army, Southern Command.

³² Arnold J. Toynbee, work cited, pp. 776-777.

See text of the letter in Paul de Véou, pp. 170-175.

6. Decision of the Council of the League of Nations

- M. Sandler, the Rapporteur, presented to the Council of the League of Nations, on January 27, 1937, a set of proposals for a new status for the Sanjak, based on the recent French and Turkish understanding. The following is a summary of the proposals:
- 1. The Sanjak would constitute a separate entity. Syria would be responsible for its foreign affairs, but it would itself enjoy full independence in internal affairs. Syria and the Sanjak would have the same customs and monetary systems.
- 2. Supervision of the League would be insured by appointing on the spot a delegate of French nationality by the Council of the League of Nations.
- 3. The Sanjak would have no army; only local police forces might be organised for internal purposes. A Franco-Turkish treaty would be concluded, which would contain provisions by virtue of which Turkey and France should guarantee the territorial integrity of the Sanjak. Another agreement should be concluded between France, Turkey, and Syria for the purpose of guaranteeing the inviolability of the Turko-Syrian frontier.
- 4. Turkish would be an official language, and the Council would decide the character and condition of the use of another language.
- 5. A Statute and a Fundamental Law would be laid down for the Sanjak; the former would define the Sanjak's status and the latter its internal organisation.

The Rapporteur proposed, moreover, to appoint, in agreement with the Mandatory Power, a Committee of Experts to study for the benefit of the Council various questions including the drafting of the Statute and the Fundamental Law. The proposals were adopted by the Council on January 27, 1937.³⁴

Meanwhile a Syrian delegation had arrived in Geneva headed by the Syrian Prime Minister, Jamil Mardam Beg. When the Committee of Experts set to work on February 20, 1937, the Syrian delegation was in close touch with M. de Caix, the French member of the Committee of Experts, who presented the Syrian Government's observation on the question. The Committee of Experts concluded its work on May 15, 1937, and the final drafts of the Statute and the Fundamental Law were completed.

On May 29, 1937, the drafts were presented to the Council of the League of Nations by the *Rapporteur* who suggested that these proposals should come into force as from November 29, 1937. The Statute and the Funda-

^{*}See text of the report in League of Nations, Official Journal, February, 1937, pp. 118-120. See also speech of the accredited representatives of Turkey, Rumania, England, and Russia, in support of the proposals (same, pp. 120-123).

²⁵ Interview with Jamil Mardam Beg, head of the delegation.

[∞] See the report of the Committee of Experts in League of Nations, Official Journal, May–June, 1937, pp. 573–589.

mental Law were approved by the representatives of France and Turkey and consequently were adopted by the Council on May 29, 1937.³⁷ On the same day France and Turkey signed an agreement guaranteeing the new regime and arranging for its defence against foreign attack. Another agreement was signed to guarantee the Turko-Syrian frontiers and the independence of Syria and Lebanon.³⁸

The decision of the Council had widely different repercussions on the various Powers and parties concerned. As Professor Toynbee has rightly remarked, it was hailed with jubilation in Turkey, with relief in France, and with mortification in Syria.³⁹ The Arabs as a whole believed that the Sanjak had been "sold down the river" by the safeguarding powers in order to save their own skins.⁴⁰ The Syrian Government prepared an elaborate memorandum which it sent, in June, 1937, to the French Ministry for Foreign Affairs, which not only protested against the Council's decision but also pointed out practical difficulties in carrying out the Statute and the Fundamental Law.⁴¹ There were strikes and demonstrations in various Syrian cities in protest against the decision of the League of Nations.

7. The Sanjak's New Regime

The Statute and Fundamental Law defined the international status and the internal organisation of the Sanjak of Alexandretta. The Fundamental Law was the constitutional charter and dependent on the Statute. It stipulated that an autonomous regime was to be set up with a legislative Assembly representing the various elements of the population. It was agreed that the new regime was to come into effect on November 29, 1937, and that France was to carry on the internal administration until the Assembly met.

The new regime of the Sanjak was to work within the framework of the Mandate System until that system had come to an end. During this period France was naturally responsible for the Sanjak's foreign relations and the supervision of its internal administration.

After the termination of the Syrian Mandate the Sanjak's new regime was to continue but Syria would then be responsible for its foreign relations, France and Turkey for its defence, and the League of Nations, through a Commissioner, was to supervise the application of the Statute and the Fundamental Law and to veto any law passed by the Sanjak's Assembly which was contrary to the provisions of the Statute or the Fundamental Law.

²⁷ Same, p. 333.

⁸⁸ See texts of the agreements in Frauendienst, pp. 413-415, 415-416.

²⁰ Arnold J. Toynbee, Survey of International Affairs, 1936, Oxford, 1937, p. 779.

⁴⁰ It is not correct to argue that the Arabs of the Sanjak had acquiesced in the settlement (Toynbee, pp. 778, 779). The writer has talked with various Arabs who left the Sanjak and who gave evidence of the strong opposition manifested at the time.

⁴¹ The memorandum is unpublished. The writer made use of its contents by kind permission of Prime Minister Jamil Mardam Beg.

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The Sanjak's new status may be defined as a collective protectorate; ⁴² the country however was not to be protected by all the powers together, for they were made severally or dually responsible for the exercise of its sovereignty. Such a regime of protection is more than a collective guarantee by foreign Powers such as was provided for Rumania and Serbia under the Treaty of Paris (1856). Under the Sanjak's new status, protection against foreign attack was intrusted to Turkey and France, foreign relations were intrusted to Syria, and the Mandatory supervision was not intrusted to a Mandatory Power—as is usually the case under the Mandates System—but made the direct responsibility of the League through its Commissioner. ⁴³

It is to be noted that while such a modification in the status of the Sanjak was entirely within the Council's powers, it is has the appearance of a step backward in the development of colonial administration. The Mandates system under the League of Nations was regarded as a relatively advanced stage in the government of dependencies, while direct international administration of territory was criticized on the ground that it would lead to confusion and to difficulties in defining responsibilities. The Mandates System, as propounded by General Jan C. Smuts, marked an advance by making the Mandatory Power responsible for the administration of the dependency. The Mandatory Power, moreover, was intended to administer the territory with a conscientious regard for the welfare of the native inhabitants. The Mandatory has no sovereign powers, but is responsible to the League for the administration of the Mandate.

- ¹² Hershey uses the inaccurate term "international protectorate" for any "weak or inferior state" which has "been placed under the protection of a more powerful one." He does not confine the use of the term to a territory which has been placed under the collective protection of more than one Power (Amos S. Hershey, Essentials of International Public Law, New York, 1923, p. 107). There seems to be a need to distinguish between a territory protected by one Power and one under the collective protection of several powers. The term "collective protectorate" may be used to define the latter case.
- ⁴³ Mention may be made of the contemplated international protectorate of Palestine under the Sykes-Picot Agreement (1916) by Great Britain, France and Russia. But there was no idea at the time of international supervision. See text of the agreement in H. W. V. Temperley, History of the Peace Conference of Paris, London, 1924, Vol. VI, p. 16.
- ⁴⁴ Quincy Wright, Mandates Under the League of Nations, Chicago, 1930, pp. 119 and ff. ⁴⁵ Temperley, Vol. II, p. 232; W. E. Hocking, The Spirit of World Politics, New York, 1932, p. 227.
- 46 Jan C. Smuts, The League of Nations, A Practical Suggestion, New York, 1919, pp. and 14 ff.
- ⁴⁷ "The post-war mandate, it has been said, differs from the pre-war protectorate over native people in that the mandatory is a protector with a conscience, and with a keeper of his conscience": Norman Bentwich, "Colonies and Mandates," in *The Contemporary Review*, No. 841 (January 1936), p. 43.
- ⁴⁸ "What sharply distinguishes the Mandatory system from all such international arrangements of the past, is the unqualified right of intervention possessed by the League of Nations. The mandatories act on its behalf. They have not sovereign powers, but are responsible to the League for the execution of the terms of the mandate": Temperley, Vol. II, p. 236.

Under the new regime of the Sanjak of Alexandretta, it is true, a form of the Mandatory System was to continue and the League's supervision was maintained through its Commissioner. But the other "protecting" Powers were relieved from direct control of the League such as is provided by the terms of the Mandates System. Moreover, the drawbacks of direct international administration were not avoided under the new regime, which actually added to the complicated administration of that tiny dependency. The case furnishes a good example of sovereignty being neatly divided in order to satisfy foreign interests and local conditions.

8. The First Elections

It was laid down in the Council's decision on May 29, 1937, that the first elections for the new Assembly should be organized and supervised by a commission appointed by the League of Nations. The commission was appointed on October 4, 1937, under the chairmanship of Mr. T. Reid and proceeded to the Sanjak after visiting Ankara and Damascus. The so-called Regulations for the first elections were prepared after a detailed study on the spot and were actually drafted in Geneva after the return of the commission.

The elections were to begin on March 28 and to be completed by April 15, 1938. The constituencies were not divided on geographical lines, but on racial and religious divisions, namely, into Turkish, Alawi, Arab, Armenian, Greek Orthodox, Kurdish, and other communities. These communities were granted minimum numbers of seats, but on the whole representation was to be proportionate to the number of names registered in each community. Thus "registration" of the number of the various communities was regarded as a very important preliminary step before the first elections should begin. 49

The Arabs objected to a division of constituencies on religious grounds and criticised the Regulations because they separated the Alowites from the Arabs. It is to be noted indeed that the commission was not consistent in following either a racial or religious basis in its apportionment of the constituencies. In spite of that, however, the Arabs formed a more solid front than had been expected by the Turks. There were strikes, demonstrations, and other activities which showed more solidarity on the part of the Arabs than the Turkish elements could offset. Yet this solidarity became the reason for the intervention by the Turkish Government which was interested in producing a result favourable to itself.

The Turkish Government again appealed to the League of Nations. It sent protests on December 15, and December 24, 1937, complaining that the draft electoral Regulations had been prepared by the League's Commission

⁴⁹ See text of the Regulations in League of Nations, Official Journal, February, 1938, pp. 137-144.

⁵⁰ See the Arab point of view in al-Uruba (an Arabic paper in Antioch), November 25, 1937; January 26, 28, 29, 30, and February 2, 1938.

in collaboration with France, The Mandatory Power, without any consultation with the Turkish Government. The Turkish Government, accordingly, demanded that the whole matter of the Regulations should be discussed by the Council of the League of Nations.⁵¹

The Turkish accusations, however, were not justified from the legal point of view, because the Commission was appointed by the League and was supposed to work independently. Furthermore, the Commission, as Mr. Reid, its chairman, pointed out, did not collaborate with French officials in drafting the Regulations, but only received official data from them "when requested to do so by the Commission." The Commission was solely responsible for the draft Regulations.

The Council of the League of Nations discussed the objections of the Turkish Government at its meetings on January 28 and January 31, 1938, and a new compromise was reached. A new Commission was appointed, including representatives of France and Turkey, and certain specific modifications were made, most important of which came in the article dealing with the procedure of registration. Applicants for admission to the electoral rolls were left a free choice. Originally the article stipulated that the elector should give evidence of the community to which he claimed to belong; now he was no longer required to do so. The date of the first elections was postponed until July 15, 1938.

Registration was resumed on May 3, 1938, but the situation was growing strained. The French officials became more subservient and under Turkish pressure a number of Arab officials were replaced by Turks of the pro-Kemalist movement. Furthermore, Turkish prisoners were released and some Arab leaders were arrested. Such actions led to more clashes between Arabs and Turks.⁵³ The French authorities tried to form a party of "National union" whose aim was to initiate a movement comprising all racial and religious elements in support of the new regime, but failed. The Arabs boycotted all attempts at cooperation. The Turks were becoming stronger every day as a result of Turkish propaganda and the threat of force from across the frontier. Rumors were spread that Turkish troops might intervene at any moment to insure a Turkish victory at the polls.⁵⁴ No wonder, therefore, if confusion became so prevalent in the Sanjak that the League Commission found it impossible to continue its work and left the Sanjak on June 19, 1938.

The situation had indeed become intolerable and therefore France was

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²¹ See text of the Turkish letters in League of Nations, Official Journal, February, 1938, 1938, pp. 132-134, 134-135.

⁵² See text of Mr. Reid's letters in same, pp. 135-136, 148-151.

⁵³ Report of Sayid Nabih al-Adhma to the Syrian Government, dated February 19, 1938 (unpublished).

⁶⁴ Interview with Arabs from Alexandretta. See also A. J. Toynbee, Survey of International Affairs, 1938, Oxford, 1941, Vol. I, p. 484.

obliged to go a step further in its concessions to Turkey in order to reach a final settlement of the problem. A new agreement was signed between Turkey and France on July 4, 1938, which stipulated that Turkey should collaborate with France in carrying out the Treaty of May 29, 1937, which provided that France and Turkey were to guarantee the territorial integrity of the Sanjak. On the same day France and Turkey signed another agreement of friendship by virtue of which each of the contracting parties undertook to abstain from entering any alliance against the other, and to give no form of assistance to any aggression against the other. 55

Meanwhile negotiations were taking place between Adil Arslan, Syrian diplomatic agent in Ankara, and the Turkish Government with a view to reaching an agreement by dividing the Sanjak between Turkey and Syria. The Syrian Government requested the Iraq Government early in June, 1938, to extend its good offices by proposing a compromise plan of partition. The Iraq Government extended its good offices, through the Iraqi Minister in Ankara, Sayid Naji Shawkat, on June 30, 1938. Sayid Naji Shawkat discussed the project of partition with the Turkish Foreign Minister, Dr. Aras, and reached an agreement on July 1, 1938, on the following points: (1) The Sanjak was to be partitioned between Turkey and Syria on condition that the city of Antioch should be given to Turkey; (2) exchange of Arab and Turkish populations between Turkey and Syria; and (3) Syria to have rights in the use of the port of Alexandretta. These terms were communicated to the Syrian and Iraq Governments, but the Syrian Government rejected the proposal to give Antioch to Turkey.

It is to be noted, however, that Turkey had already struck a better bargain with France in its agreement of July 4, 1938, so that when Syria's position had been so weakened that she was later ready to accept the partition plan proposed by Dr. Aras, the latter informed both the Iraq Minister and the Syrian diplomatic agent in Ankara on July 8, 1938, that it was too late for any further discussion of partition.⁵⁸

9. The Republic of Hatay

The elections were resumed on July 15, 1938, and returned 22 deputies for the Turks and 18 for the Arabs, Armenians, and Greek Orthodox communities. This meant that the Turkish percentage of the population had appar-

⁵⁶ France recognised in this agreement further Turkish claims in order to strengthen her position in the Eastern Mediterranean. Turkey, however, declared that she did not claim sovereignty over the Sanjak.

Reported to the writer by Sayid Naji Shawkat, Iraq Minister to Turkey. The writer has been shown the original draft project in Dr. Aras' handwriting which Sayid Naji Shawkat has kept for himself.

⁵⁷ Interview with Sayid Jamil Mardam Beg, Syrian Prime Minister, and Sa'dullah el-Jabiri Beg, Foreign Minister.

⁵³ Interview with Sayid Naji Shawkat.

ently increased from about 40 per cent to over 60 per cent of the total.⁵⁹ In this way the Turks have at last an official majority in the Sanjak.

On September 2, 1938, the Assembly was opened and the proceedings were conducted entirely in Turkish. 60 Abdul Ghani Turkman was elected President of the Assembly, and declared in his first statement to the Assembly that the Sanjak had been liberated from tyranny. 61 Tayfur Bey Sokman was elected head of the new "state." 62 In the first meeting of the Assembly the name of the Sanjak was changed into "Hatay," a Turkish name to express the Turkish character of the new regime, and the state came to be known as the Republic of Hatay. 63

On September 5, 1938, Tayfur Bey invited Dr. Abdul Rahman Melek to form a cabinet which turned out to be exclusively Turkish. On September 6, 1938, the Prime Minister spoke in the Assembly and declared the intention of his Government to observe the international obligations of Hatay. It was decided at the same meeting to move the capital from the city of Alexandretta to Antioch. Later on, in January 1939, the Assembly passed acts adopting the Turkish criminal and civil codes. Moreover it was reported that Turkish officials had been sent to Hatay in order to reorganize its fiscal system.

10. The Annexation of Hatay

The Republic of Hatay had hardly enjoyed a year of autonomous life before Turkey effected the final step in the cession of the Sanjak from Syria. France had become, after the Munich agreement, more concerned about her position in the Eastern Mediterranean and needed to strengthen her friendship with Turkey. Turkey, on the other hand, although alarmed over the Munich Agreement, 55 followed almost the same tactics as Germany in her annexation of the Sanjak. A new agreement was signed with France on June 23, 1939, by virtue of which the cession of the Sanjak was completed. 56

59 See note 5, above.

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- 60 The Statute as a matter of fact permitted the use of Arabic as well.
- a See Yeni Gön (a Turkish paper published in Antioch), September 3, 1938.
- ⁶² Tayfur Bey Sokman was a personal friend of President Atatürk. He sent a telegram of thanks to Atatürk after his election; the latter replied that he will "look at Hatay with consideration and love": Yeni Gön, September 6, 1938.
- ⁶³ Hatay is the Turkish name of the ancient Hittites who were, according to the Turks, of Turkish origin. Historians, however, are of the opinion that the Hittites were an Indo-European race. See James H. Breasted, *Ancient Times*, Boston, 1935 (2nd ed.), pp. 244–245.
- ⁶⁴ The majority of the inhabitants of Antioch speak Turkish while those of Alexandretta speak Arabic.
- [∞] See Philip W. Ireland, "Turkish Foreign Policy after Munich," in *The Political Quarterly*, Vol. X (1939), pp. 185–201.
- See text of the agreement in League of Nations, Official Journal, July-August, 1939, pp. 356-360.

The frontiers between Syria and Hatay, with slight rectifications in favour of Syria, became the frontiers between Turkey and Syria. The agreement provided, however, that any citizen above the age of 18 could opt for Syrian or Lebanese nationality during the six months following the entry into force of the agreement and these were permitted to take all their movable property to their new homes. The ratifications of the agreement was exchanged on July 13, 1939, and the Assembly of Hatay met for the last time on June 29, 1939. Upon its annexation to Turkey, Hatay became the sixty-third vilayet of the Turkish Republic.

Mr. H. Beeley has rightly compared the position of Hatay during 1938–1939, which legally was within the frontiers of one state but in reality controlled by another, with the districts of Bosnia and Herzegovina between 1878 and 1908.⁶⁷ The Republic of Hatay was still nominally regarded as being under the French Mandate and within the Syrian monetary and customs union but the Assembly of Hatay, it will be recalled, had adopted measures which had the effect of making the character of the Sanjak completely Turkish.

While it was within the competence of the Mandatory Power, with the approval of the League Council, to effect a change in the autonomous regime of the Sanjak, a new modification in the boundaries of Syria was outside its powers since it directly affected the terms of the Mandate.⁶⁸ Article 4 of the Mandate for Syria and the Lebanon laid down that "The Mandatory shall be responsible for seeing that no part of the territory of Syria and the Lebanon is ceded or leased or in any way placed under the control of a foreign power." This incompetence of the Mandatory Power to cede or lease any part of the Mandated territory had been discussed in the Council of the League of Nations in connection with the delimitation of the frontiers between Syria and Turkey. France, as Mandatory Power, was reminded that the exclusive control of the Mandatory Power over the foreign relations of the mandated territory did not include "power to cede or lease on its sole authority, any part, however small, of the territory." 69 This decision was also endorsed by the Permanent Mandates Commission at its eighth meeting in February-March, 1926.10

The cession of the Sanjak of Alexandretta, therefore, by an agreement between France and Turkey, on the sole authority of the Mandatory Power, was contrary to the decisions of the Council and the Permanent Mandates Commission as well as contrary to the very terms of the Mandate for Syria and the Lebanon.

While the Council of the League kept silent about the cession, the Perma-

Eleeley in A. J. Toynbee, Survey of International Affairs, 1938, Oxford, 1941, Vol. I, p. 489.
 Wright, p. 122.

⁶⁹ League of Nations, Official Journal, April, 1926, pp. 522-523.

⁷⁰ League of Nations, Minutes of the Permanent Mandates Commission, Eighth (extraordinary) Session, 1926, p. 204.

nent Mandates Commission discussed both the new regime of Hatay and the final cession at its 34th and 35th sessions, in June, 1938, and in the 36th session, in June, 1939. M. Rappard, a member of the Permanent Mandates Commission, raised objections to the French action with regard to the final cession as having been contrary to Art. 4 of the Mandate. M. de Caix, French accredited representative, argued that traditionally there was a Syrian territory but its boundaries were not precisely known. Moreover, he contended, the cession was in the interests of Syrian security. M. Rappard commented on M. de Caix's statement:

The guardian, in an interest which was essentially his own, had abandoned to a third party a portion of the ward's inheritance, after having been entrusted with its defence. The accredited representative would certainly say that what had been done was in the interest of the ward. If [he] remembered rightly, it was Montesquieu who had defined a tax as being a gift to the State by the taxpayer of a portion of his estate in order to ensure the security of the remaining portion. A similar formula would doubtless be applied in the present case, but it would require all the gifts and persuasive talents of M. de Caix to make one believe that there had not been a violation of the Mandate.

M. de Caix was finally forced to admit that the cession was effected under pressure of political circumstances but he suggested that further discussion of the case should be stopped since the status of the Sanjak had passed outside the Commission's supervision.⁷²

It is to be noted, in conclusion, that the final step in the settlement of the Alexandretta dispute was not only completed on political rather than on legal grounds, but was also effected in direct agreement between France and Turkey outside the Council of the League of Nations.

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 $^{^{\}rm n}$ League of Nations, Minutes of the Permanent Mandates Commission, 36th Session, 1939, p. 222.

ⁿ Same, p. 223.

PROCEDURAL PROBLEMS IN INTERNATIONAL ARBITRATION

By Kenneth S. Carlston New York City

The procedural aspects of international arbitration have largely been neglected. Tribunals are prone to borrow their rules of procedure from one another without considering their suitability for the particular arbitration at hand.¹ Time rarely permits then to act otherwise in the hurry and pressure attendant upon the opening of an arbitration. Agents and counsel are anxiously preparing their cases and awaiting the opening of oral arguments. During the course of the arbitration the ever-nearing date fixed for its completion, the mounting expense of maintaining the staffs, and the burdens of other official duties awaiting the arbitrators and advocates upon the completion of their tasks all tend to discourage the deliberate consideration of procedural problems. Though the need for procedural reform was long ago recognized,² the problem has received relatively little attention from writers.³

¹ Thus, the General Claims Commission, United States and Mexico, under the Convention of September 8, 1923, 43 Statutes 1730, adopted the method of presentation by memorial followed in the prior Mexican claims arbitration of 1868 (Rules and Regulations, Art. 3, III Moore, *International Arbitrations*, 2153, despite the fact that four extensions of time were required by the earlier commission to settle the considerably fewer claims docketed with it (same, Vol. II, 1297–1298). The rules of the General Claims Commission in turn spread, with some modification, to the rules of the other claims commissions charged with settling claims against Mexico, see below, note 74. This is not to say that uniformity by commissions in the recognition of certain basic principles of procedure is not desirable as tending to the establishment of customary rules of procedural law, see Sandifer, D. V., *Evidence Before International Tribunals*, Chicago, 1939, p. 31.

³ Dennis, W. C. "The Necessity for an International Code of Arbitral Procedure," in this Journal, Vol. 7, p. 285; Lansing, R., "The Need of Revision of Procedure before International Courts of Arbitration," in *Proceedings of the American Society of International Law*, 1912, p. 158.

Ralston, J. H., The Law and Procedure of International Tribunals, Stanford, 1926, pp. 191-213, and Supplement to 1926 revised edition of same, Stanford, 1936, pp. 96-108, devotes in each case only one chapter to procedure. Bishop, C. M., International Arbitral Procedure, Baltimore, 1930, is primarily descriptive in its approach. Caldwell, R. H., A Study of the Cods of Arbitral Procedure adopted by the Hague Peace Conferences of 1899 and 1907, Carnegie thesis, in manuscript, 1921, is necessarily restricted in scope. A condensed but most interesting description of procedural processes appears in Hudson, M. O., International Tribunals, Washington, 1944, pp. 84-98. Acrement, A., La Procedure dans les Arbitrages Internationaux, Paris, 1905, is a thoughtful early study. An illuminating analysis of procedural problems and suggestions for reform with respect to functioning of the American and Panamanian General Claims Arbitration established under the Conventions of July 28, 1926, and December 17, 1932, appears in the Report of the Agent for the United States, Department of State, Arbitration Series, No. 6, 1934, pp. 7-29. Some excellent procedural suggestions are found in a few pages of Nielsen, F. K., International Law as Applied to Reclamations, Washington, 1933, pp. 67-69, 72-74. Witenberg, J. C., L'Or-

Their attention has for the most part been directed to a description of existing procedural practices. Critical analysis and investigation of the relation of procedural rules to the successful conduct of international arbitrations is almost lacking in the literature of the subject. With the demands which are bound to be made upon the system of international arbitration in the post-war years consideration of such problems is obviously necessary.

PROPOSED MEASURES OF REFORM OF ARBITRAL PROCEDURE

Neglect of procedural problems has not only provoked unnecessary disputes between litigants but has been a cause of the expensive, leisurely, protracted course for which international arbitrations have at times been condemned.4 In at least one international arbitration of note the failure to adapt the procedural rules to the necessities of the arbitration led to its abandonment and transfer to a domestic body. During the first eight years of its existence, the Special Claims Commission, United States and Mexico,

ganisatión Judiciaire, La Procédure et La Sentence Internationales, Paris, 1937, pp. 110-261, while comprehensive and well documented, is also primarily descriptive of procedural steps rather than a critical study. Hoijer, O., La Solution Pacifique des Litiges Internationaux, Paris, 1925, pp. 250-270, is broadly descriptive in content. Of the early studies on arbitration, see Merignhac, A., Traité Théorique et Pratique de L'Arbitrage International, Paris, 1895, pp. 244-282, 435-439; Kamarowsky, L. A., Le Tribunal International, Paris, 1887, pp. 175-180, 510-512; Dreyfus, F., L'Arbitrage International, Paris, 1892, pp. 271-296. An extensive literature on the Mixed Arbitral Tribunals created under the Treaty of Versailles and the other Treaties of Peace exists, however, see bibliography collected in Teyssaire, J., and Solère, P., Les Tribunaux Arbitraux Mixtes, Paris, 1931, pp. 231-243. See also Nielsen, F. K., "Progress in Settlement of International Disputes by Judicial Methods," in Journal of the American Bar Association, Vol. 16, p. 229; Carlston, K. S., "Importance of Procedural Rules in International Arbitration," in International Arbitration Journal, Vol. 1, No. 1 (April, 1945), p. 58; Garnier-Coignet, J., Procedure Judiciaire et Procedure Arbitrale, in Revue de Droit International, Vol. 6, p. 123.

See remarks in 75 Cong. Rec., p. 14425. As to the costs of international arbitrations, consider the following examples: Appropriations for arbitrations embodying a single issue or claim:

	\$45,000, 42 Statutes 336
Norwegian ship claims (Norway v. U. S.)	60,000, 42 Statutes 336
For arbitrations embodying many claims:	

	1922 – 1932
United States—Germany Mixed Claims Commissions Tripartite Claims Commission	\$1,339,863*
Tripare to Commission	1924-1932
United States—Mexican Mixed Claims Commissions	\$2,574,730**

^{* 42} Statutes 1051; 43 Statutes 215, 1023; 44 Statutes 359, 1189; 45 Statutes 74, 913, 1105; 46 Statutes 183, 886, 1581; 47 Statutes 25.

** 43 Statutes 691, 1024; 44 Statutes 340, 865, 1190; 45 Statutes 74, 1105; 46 Statutes 184,

The foregoing computations, of course, fail to take into consideration any unexpended appropriations turned back to the Treasury. Deduction of a specified percentage from awards to cover the expenses of the arbitration is sometimes made, 56 Statutes 1058, 1063, but this only adds to the burden of claimants without affecting the amount of expenses incurred.

^{1318; 47} Statutes 25.

created under the Convention of September 10, 1923, decided 18 claims. In a corresponding period of time the General Claims Commission, United States and Mexico, decided 148 claims, making an aggregate of 166 claims decided out of some 5,736 claims filed with both commissions. Yet the Special Mexican Claims Commission, functioning as a statutory national commission under the Act of April 10, 1935, and not under the Convention of September 10, 1923, and untrammeled by elaborate procedural rules, decided 2,833 claims in a little over two and one-half years and this on a budget of less than \$90,000 a year as against an aggregate expenditure during their life of over \$2,000,000 when the Commissions functioned in the traditional manner of international tribunals.

Codification of established international arbitral procedure, through establishment of a uniform code of procedure, does not seem likely to furnish an answer for all procedural problems. The statement of rules upon which there can be a general agreement among states will inevitably tend to be confined to those very points where problems are least likely to arise. The progress to be made in this direction by general agreement therefore tends to be slight, though the work preparatory to the formulation of a code of international arbitral procedure may very well be expected to be of great value. The experience of the Institute of International Law is illuminating. The Institute at its first meetings, in 1874 and 1875, adopted a project of rules for international arbitral procedure, which laid down the general principle that the conduct of any one arbitration is to be formulated by the particular compromis or by the arbitrators. For the rest, the Règlement of the In-

- ⁵ See Feller, A. H., *The Mexican Claims Commissions, 1923–1934*, New York, 1935, pp. 60, 68; Turlington, E., "Comments on the Rules of the Special Mexican Claims Commission," in *Journal D. C. Bar Association*, Vol. 3, pp. 22, 23; McDonald, J., and Barnett, C., "The American-Mexican Claims Arbitration," in *A.B.A. Journal*, Vol. 18, pp. 183, 184.
 - 49 Statutes 149.
- ⁷See McKernan, L. W., "Special Mexican Claims," in this Journal, Vol. 32, pp. 457, 461. It was recognized that the Commission had at its disposal "a veritable mine of information" collected by the former Agency and that its task was confined to a review of the records and did not include the preparation and prosecution of cases undertaken by the former Agency, same, p. 463; Rules and Regulations of the Special Mexican Claims Commission, Rules II and VII. Moreover, approximately 500 claims were submitted to the former Commission by the American Agency in Memorial form, of which 150 were briefed as to facts and law, and evidence probably sufficient for memorialization was obtained by the Agency on some 200 additional claims. Turlington, cited above, note 5, footnote 11.
 - ⁸ Compare Caldwell, cited above, note 3, at 75, 83.
- ^o See Report of the First Committee on the Progressive Codification of International Law to the Assembly of the League of Nations, September 27, 1927, League of Nations Official Journal, Special Supp. No. 54, Annex 35 (Document A.105.1927.V); Replies by Governments to the Questionnaires Nos. 1 to 7, Report of the Committee of Experts for the Progressive Codification of International Law to the Council of the League of Nations, April 20, 1927 (Document C.196.M.70.1927.V).
- ¹⁰ Réglement pour la procédure arbitrale internationale, Arts. 12 and 15, Annuaire de L'Institut de Droit International, 1877, pp. 126, 129, 130.

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stitute chiefly addressed itself to the statement of such self-evident facts as "the compromis is concluded by a valid international treaty," 11 or "the compromis gives to each of the contracting parties the right to address itself to the arbitral tribunal," 12 or "each of the parties may constitute one or several representatives before the arbitral tribunal," 18 and to the consideration of such incontroversial matters as the naming of the arbitrators, the determination of the place of sitting, and the manner of rendering the award.14 In relatively few cases were provocative procedural problems attacked. 15 The Hague Conferences of 1899 and 1907, through a step forward, did not greatly advance the solution of procedural problems. 16 The Convention for the Pacific Settlement of International Disputes, as finally adopted, again left to the discretion of the tribunal the adoption of rules of procedure for the conduct of the case, in the absence of specific directions in the compromis.¹⁷ It is true that reference was made to the filing of cases, counter cases, and replies, but the form, order, and time in which these were to be filed were to be defined by the compromis.18 This is not to say that the Convention did not exhibit a realistic approach, to some extent. Given its task of creating an all embracing code of rules for international tribunals, whatever their form and whatever their task, it recognized that the formulation of procedural rules should proceed on an ad hoc basis, with the tribunal being empowered to determine its own procedural rules to fit its own problems.

The variability in the factors affecting the successful conduct of any international arbitration is too great to enable the creation of any one comprehensive code which would furnish a never-failing guide for the conduct of all arbitrations. In evitably such a code would suffer from lack of flexibility and technical refinement. Rules that may function well enough in one arbitration may lead to a complete breakdown when introduced in another arbitration possessing totally different characteristics. Each arbitration pre-

¹⁴ Same, Arts. 2-9, 21-24. Compare the criticism made of the project by the Fourteenth Commission of the Institute in its report of 1927, same, 1927, pp. 571-593.

¹⁶ Same, Art. 27, relating to the nullity of awards, has had much influence upon the arbitral law governing nullity. See also Arts. 14, 16 and 17. At its session of 1927 the Institute decided to begin the elaboration of a code of arbitral procedure, in view of the progress made in arbitration, same, 1927, pp. 319, 320, 324.

¹⁶ See Dennis, above, note 2, at pp. 290, 291.

¹⁷ Art. 52, 74. Proceedings of the Hague Peace Conferences, Conference of 1907 (Carnegie Translation), New York, 1920, Vol. I, pp. 599, 608, 611.

¹⁸ Arts. 52, 63, same, at pp. 608, 610.

¹⁰ Compare Moses, F., "International Legal Practice," in Fordham Law Review, Vol. 4, p. 244. With regard to the difficulties in legislative reform of municipal procedure, see Sunderland, E. S., "The Machinery of Procedural Reform," in Michigan Law Review, Vol. 22, pp. 293, 297–300. Thus a commentary on the new Federal Rules of Civil Procedure, which were established only so recently as 1938, runs into four volumes (Moore's Federal Practice, Albany, 1938) and the Federal Rules Service, Chicago, started in 1939, has extended into seven volumes.

sents its own peculiar problems. In one the respective governments may be primarily interested in the precedents to be established by the decision; an elaborate procedure, with ample opportunity to develop through a series of pleadings and oral argument the issues involved, best serves such an end. Thus the careful and detailed rules of the Permanent Court of International Justice have worked very well in their orbit, when an exhaustive presentation of its case is the paramount desire of each litigant. But in other instances, as, for example, an arbitration of a multiplicity of small claims, dispatch may be the primary requisite, so that pleadings and hearings must be reduced to a minimum. If the litigants live under different systems of law, as, for example, the Continental Civil Law as against the English Common Law, great care must be taken in defining in the rules the scope and nature of the pleadings and the time and manner of the introduction of evidence. of the disputes to be decided and the extent to which they involve complex questions of law and fact must also be borne in mind. When the issues are simple protracted and refined procedural steps are superfluous. procedure must ever accommodate themselves to the varying conditions of each arbitration if misunderstanding and difficulty in the conduct of the arbitration is to be minimized.

A certain amount of improvement may be achieved through the incorporation of detailed rules of procedure in the compromis. The rules of procedure in such case are binding on both tribunal and litigants and only the form and manner of presentation prescribed by the rules can be permitted by the tribunal when a threat to depart from the rule occurs. Thus a precise definition in the compromis of the times for the introduction of pleadings and evidence eliminates disputes on the disposition of late filings by rendering the tribunal powerless to receive them. While this would be desirable in order to bind a tribunal charged with the prompt disposition of numerous claims, in order that it might not be tempted to sanction delays and departures from the rules, the case of tribunals charged with the decision, on a fair and lasting basis, of important disputes long pending between states is not so clear. Some area of judicial discretion may in such case be desirable in order to insure that full justice shall be done. To establish by the compromis inexorable rules of conduct governing all action of the tribunal and of the advocates involves the sacrifice of flexibility.20 In general some opportunity must exist for modifying and supplementing procedural rules when the occasion demands.21

²⁰ Acrement, cited above, note 3, at p. 107.

²¹ At least one attempt to define in the arbitration agreement the contents of the pleadings to be filed failed to achieve an entirely satisfactory solution. Notwithstanding a rather precise description of the pleadings contained in the exchange of notes between the United States and Guatemala providing for the arbitration of the Shufeldt Claim (U. S. v. Guatemala, 1929) Department of State, Arbitration Series No. 3, 1932, pp. 9–14, see particularly p. 10, par. 4, 6 and 7, the reply of Guatemala was much more elaborate than its case. Same, p. 407. The United States was placed somewhat at a disadvantage as a result in that it

The suggestion was made in one claims arbitration that the compromis should include a preliminary statement of procedural rules, power being vested in the tribunal to amend them as required after its sessions have begun.22 While this was primarily advanced as a means of avoiding the delay incident to having the tribunal meet solely for the purpose of adopting rules, only thereafter to adjourn pending the preparation of cases for submission in accordance with such rules, the suggestion affords a means for more basic procedural reform. It is believed that the fundamental source of the various procedural difficulties to be discussed later is the failure to appreciate adequately and to provide for the particular procedural problems involved in the arbitration. Generally in claims and similar arbitration proceedings the body charged with the power and duty of providing rules of procedure has been the tribunal itself. But the members of the tribunal are not chosen because of their previous familiarity with the arbitration entrusted to them. Rather the contrary is the case. Though generally of distinguished attainments in international law, rarely do they possess a long background of experience as arbitrators. Hence the tribunal, capable as it may be for the decision of the disputes to be submitted to it, is not necessarily best qualified to exercise the rule-making power. The task of determining the rules for the tribunal should rather be delegated to that body most likely to possess an accumulation of experience in international arbitrations. It is believed, therefore, that foreign offices should be more active in assuming this task, for with the growing use of arbitration as a means for the settlement of international disputes they have come to possess a reservoir of experience in this In some cases, it might be left to the respective agents to arrive at an agreement in advance as to rules of procedure, with the tribunal empowered to settle any undecided questions by prescribing applicable rules or by way of interlocutory decision or otherwise. Such rules, whether prepared by the respective foreign offices or by the agents, could serve as a basis for procedure before the tribunal until later amended by it. In any event rules drafted with a view to the specific problems of the arbitration, and drafted by those of experience in arbitration technique, would go far towards smoothing the paths of arbitral bodies and in advancing the cause of international arbitration.

PROCEDURAL PROBLEMS IN ARBITRATIONS LIMITED TO A SINGLE CASE

Procedural difficulties are necessarily much less likely to arise when the arbitration is confined to the decision of a single dispute instead of many.

could not then file additional evidence, which would have been open to it in replying to Guatemala's first pleading, and it was limited to thirty days in which to prepare the written argument to meet Guatemala's reply while sixty days would have been available to it had the matter been included in Guatemala's case. Same, 10 par. 6, 7. See also the remarks of the Mexican Agent before the Hague Court in the Pious Fund case. Pious Fund of the Californias, Report of Jackson H. Ralston, For. Rel., U. S., 1903, Appendix II, pp. 515-516.

² See Report of the Agent for the United States, above, note 3, at p. 21.

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Generally these difficulties concern questions as to the scope of the pleadings and as to the time and manner of the introduction of evidence.

Pleadings, in general, fall into one of two systems of nomenclature. In certain recent multi-claims arbitrations, the opening pleading (i.e., the complaint) is termed the memorial and is followed successively by the answer, the reply, and the rejoinder or the answer to the reply. In the arbitration of single disputes, the opening pleading is often designated as the case and is followed by the counter-case, or answer, and the reply.

Argument as to the scope of pleadings is not likely to be provoked when the arbitration goes forward under the direction of counsel whose legal experience has been under similar systems of law.²³ But when one of the countries adhered to the civil law while the other upholds Common Law, dissension between the respective agents may well be expected to arise. Those trained under the latter system tend to regard the function of the first pleading as one of a narration of the facts upon which the position of their government is grounded, to which is joined the evidence in support of their contentions.²⁴ On the other hand, those possessing the Civil Law background appear to view the first pleading as serving the function of furnishing a discussion of law as well as of fact.²⁵ Material disadvantage will less likely result to either party from this variance of view if their true position as plaintiff and defendant is frankly recognized. When the rules provide that the plaintiff government is to file its case first, to be followed in turn by the answer of the respondent and subsequent pleadings, each party is afforded an opportunity

²⁸ American counsel were engaged by both litigants in the Tacna-Arica arbitration where it happened that the cases and counter-cases of each were generally similar in scope, though the exposition of facts tended to be presented within the structure of a legal analysis: Arbitration Between Peru and Chile Under Protocol and Supplementary Act of July 20, 1922, Case and Counter-case of the Republic of Chile, Case and Counter-case of Peru. Likewise, in an arbitration taking place under civil law conceptions, an identity in scope of pleadings followed: Affaire de Limites entre La Colombie et le Vénézuéla. (Sentence Arbitrale du Conseil Fédéral Suisse sur diverses Questions de Limites entre la Colombie et le Vénézuéla, Berne, 24 mars 1922); Première Mémoire, Réponse, Réplique des Etats Unis de Vénézuéla; Première Mémoire, Mémoire Responsif, Réplique de la République de Colombie.

²⁴ See Memorial of the United States, Pious Fund of the Californias, cited above, note 21, at p. 21; Chamizal Arbitration (United States-Mexico, 1910), Case of the United States, p. 6, Counter-case of the United States, pp. 3–4; United States-Venezuelan Arbitration, Protocol of Feburary 13, 1909 (Orinoco Steamship Company Case), Case of The United States, p. 6, Counter-case of the United States, pp. 4–6. Exceptions to this practice may occur to meet the intent of the protocol, see the pleadings in the Alsop Claim (U. S. v. Chile, 1909), Case of the United States, pp. 44 and ff.; otherwise, see North Atlantic Coast Fisheries Arbitration (U. S. v. Great Britain, 1910), Final Report of the Agent of the United States, Vol. I, p. 11.

²⁵ See the *Demanda* and *Réplica* of Mexico in the Chamizal Arbitration, above, note 24, and the *Premier Mémoires* and *Répliques* of Columbia and Venezuela in their boundary arbitration of 1922, above, note 23. This approach is followed in the Rules of Court of the Permanent Court of International Justice; *Publications*, Ser. D., No. 1, 1936 (3rd ed.), pp. 28, 43.

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to meet the pleadings of the other no matter to what lengths they may go.²⁶ A disparity of position, however, can readily be created when the parties are limited by the *compromis* to the simultaneous exchange of cases and countercases with no opportunity provided whereby they may come to a full understanding concerning the scope of each.

The facts of a case can rarely be grasped by the lawyer or judge without at least partially fitting them into some legal framework.²⁷ Accordingly, that party which first makes clear to the arbitrator its legal position is most apt to influence the decision in its favor. On the other hand, the restriction of the case to a narration of fact in one respect places the more venturesome opponent, who has discussed both fact and law in its case, at a disadvantage. While he has thus disclosed his position, he labors in the dark when making an answer to his opponent's pleading in that he must endeavor to anticipate undisclosed legal grounds. Thus we find the Agent of Sweden in the arbitration with the United States under the special agreement of December 17, 1930, complaining:

The function of the answers in the present arbitration . . . was to enable each party to answer and rebut, with additional evidence and argument, the statement of the case and supporting evidence previously filed by the opposing party, and thus to bring the parties to an issue upon the facts and the law applicable thereto. The answer of the United States can be so directed because of the full statement of the case contained in the printed documents previously filed by Sweden.

But the Agent for Sweden finds the greatest difficulty in making such an answer. . . . The Statement filed by the United States sets forth much of the legislation of the United States, and the contemporaneous correspondence, both diplomatic and otherwise, relating to the detention of the two vessels, which is printed in the Appendix to the Case of Sweden. It also sets forth the subsequent diplomatic correspondence in which the Government of Sweden presented its claim for indemnity and the Government of the United States disputed it. But whether or not the positions taken by the Government of the United States in this correspondence are now adhered to is not disclosed. . . . But it is fair to say that the Statement of the Case of the United States does not—and for wholly understandable and proper reasons—present the conclusions of fact and law upon which the United States will rest its defense to the claim of Sweden for indemnity. This answer must, therefore, be written without, for the most part, a knowledge of what defense the Government of Sweden will be called upon to rebut.²⁸

²⁶ Compare Lansing, above, note 2, at pp. 161-163. See the Landreau Arbitration (U. S. v. Peru), protocol of May 21, 1921, Art. 10, Case of the United States, 5-6.

²⁷ The concept of operative facts is illustrative: Hohfeld, Fundamental Legal Conceptions, New Haven, 1923, p. 32; Clark, Code Pleading, St. Paul, 1928, p. 84.

²⁸ Answer of the Kingdom of Sweden, Department of State, Arbitration Series, No. 5 (4), pp. 1–2. See also the United States-Norway Arbitration under the Special Agreement of June 30, 1921, Counter Case of the Kingdom of Norway, pp. 1–2, and the Alaska Boundary arbitration (Great Britain v. U. S., 1903), Proceedings of the Alaskan Boundary Tribunal, Counter-case of the United States, Vol. IV, pp. 1–2; Acrement, cited above, note 3, at p. 110.

The point was succinctly put by The Netherlands in the Palmas Island arbitration:

Whereas the first memoranda were statements of the case independent of one another, the counter-memoranda for the first time could take into account the point of view of the other party, and it was only by the counter-memoranda that each party knew the attitude of the other towards his own statements.²⁹

In the Orinoco Steamship Company arbitration, although the Venezuelan case consisted in an argument of various questions of law and fact the United States in its counter-case announced that it would adhere to its views respecting the functions of the case and counter-case. The issue in this arbitration was primarily one of law, namely, the validity of a prior arbitral award as falling within its terms of submission. In such a case little purpose can be seen in refraining from entering upon a discussion of the law until the argument. When slight dispute as to the facts exists, the case and countercase should have the function of clarifying both the factual and legal issues involved.

In the Venezuelan Preferential Claims Case at the Hague, the tribunal was requested to require Great Britain, Germany, and Italy to submit first their statement of their case, on the ground that they were in fact the plaintiffs. The resulting argument between the Powers was settled by ordering the simultaneous presentation of pleading.³¹ In the United States-Norway arbitration, the United States recognized itself as defendant.³² Again, in the Chamizal arbitration, the United States contended that in fact Mexico was the claimant government, and that the circumstance that both parties filed the pleadings simultaneously was not inconsistent with this contention because such practice was common.³³ Disputes of this nature are possibly in part induced by a desire to fix upon the opposing party the burden of proof.

The practice of concurrently filing the cases and subsequent pleadings has at times led to unnecessary duplications in the submission of evidence. In the support of their respective positions, the parties will necessarily to some degree adduce the same documentary evidence. And when evidence becomes as voluminous as it did in the *North Atlantic Coast Fisheries* arbitration, this duplication of effort with its resulting heightening of the cost of the arbitration is regrettable.³⁴ This could be avoided by the use of stipulations of fact entered into between the agents or by their reaching a definite understanding as to the production of evidence with their respective cases. For

²⁹ Explanations of the Netherlands Government, p. 11. But compare the Rejoinder of the United States, pp. 3-4.

³⁰ Counter Case of the United States, p. 6.

³¹ Report of William L. Pennfield, pp. 55, 62.

¹² United States-Norway Arbitration under the Special Agreement of June 30, 1921, Case of the United States, p. 7.

³³ Argument of the United States, p. 4.

²⁴ Above, note 24, at p. 11.

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example, the documents in the Pious Fund case were by the consent of both governments printed in one volume.³⁵

In view of the difficulties attendant upon the procedure of simultaneous filing of the successive pleadings, it was long ago recommended that this device be discarded. A complete achievement of this end seems unlikely in view of its value to foreign offices as a means of avoiding the decision of the often ticklish point of who is properly the plaintiff and the defendant. While the responsibility of this decision might be escaped by leaving it to the tribunal to decide who shall be the plaintiff and who the defendant, and then directing the filing of alternate pleadings, in such case an adjournment to permit of the preparations of such pleadings would probably be necessary with consequent protraction of the arbitration.

Other sources of difficulty lie in the production of evidence. When must it be introduced? In what form and to what extent must it be produced? Often tribunals are loath to regulate questions such as these in their rules. with the result that parties proceed haphazardly and often end in disputes which greater foresight would have avoided. A notable example is furnished in the failure of the Government of The Netherlands in the Palmas Island arbitration to include with its first pleading the greater portion of the documents referred to therein, informing the arbitrator that authentic copies thereof were available and would be produced if desired.³⁷ Its action was apparently taken in entire good faith,38 and as the result of its belief in the applicability of the principle of Civil Law which denied a defendant the power of requiring, without good reason, the plaintiff to accumulate evidence in support of every fact mentioned. 89 A like course was followed in its second pleading.40 On the part of the United States, it was insisted that such a procedure was without precedent and that assertions made without supporting proof must fall to the ground. It was contended that under the assumption of The Netherlands the tribunal would be denied the exercise of the judicial function of deciding a controversy in the light of the evidence before it.41

See Transcript of Record of Proceedings Before the Mexican and American Mixed Claims Commission with Relation to the Pious Fund of the Californias.

³⁵ Lansing, above, note 2, at pp. 161-163; Bishop, above, note 3, at p. 238.

¹⁷ Memorandum of Netherlands Government, (Preliminary) Note.

³⁸ Compare the Explanations of the Netherlands Government, p. 12:

The note was inserted by the Netherlands Government as a natural and simple matter, and it seems hardly necessary to add that there was not behind it some sinister design to prejudice the other party's position; any such intention (supposing that a party to this dispute was capable of having it) would be futile in view of article III of the special agreement.

²⁰ Same, at p. 5, citing German Code of Civil Procedure, par. 130, nos. 3, 4, 5, par. 272, 282, 350; French Code of Civil Procedure, Art. 34; Code of Civil Procedure of Swiss Canton of Basel-Stadt, sec. 98, 289. But compare Sandifer, above, note 1, at p. 282.

⁴⁰ Counter-Memorandum of the Netherlands Government, (Preliminary) Note.

⁴¹ Counter-Memorandum of the United States, pp. 2-3; Rejoinder of the United States, pp. 3-8.

the *impasse* The Netherlands sought to rely on Article III of the treaty which empowered the arbitrator to call upon either party for further explanations as a means whereby the required evidence could be introduced. Unfortunately such a solution placed the United States at a disadvantage. Its evidence had been disclosed with its first pleading, which The Netherlands was given six months to answer and to introduce evidence in rebuttal; whereas, in making its rejoinder to the further explanations of The Netherlands, the United States was limited to three months and apparently denied the opportunity of submitting further rebuttal evidence. Though the tribunal could hardly have done otherwise than to permit this irregular use of further explanations as a vehicle for late evidence, in view of the fact that The Netherlands had acted in good faith, the cause of arbitration would have been better served had the rules regulated this question in advance. This was in fact done in the subsequent arbitration Convention of March 18, 1938, with The Netherlands.

On the other hand, in the *Norwegian Claims Case*, before the Hague Court, the American Agent admirably formulated the general rules applicable to a request for the late introduction of evidence after the written pleadings had been filed:

The United States does not, however, desire to offer any captious opposition to the introduction of further documentary evidence on the part of Norway and should not oppose the introduction of such evidence if desired by Norway, always provided: (1) that some reasonable explanations be forthcoming as to why this evidence was not seasonably presented, (2) that the evidence be really relevant and of a character to assist the Tribunal in coming to a just decision, (3) that reciprocal consent, similarly conditioned, be accorded by Norway to the United States for the introduction of new evidence, (4) that suitable opportunity be given the United States for the consideration of this evidence and the presentation of rebutting evidence if necessary, and (5) especially that new evidence should not be admitted if such rebutting evidence is necessary and cannot be procured without delay.⁴⁵

In each instance, the tribunal refrained from actively intervening in the matter and the Agents came to an agreement which was satisfactory to each.⁴⁶

- ⁴² Explanations of the Netherlands Government, p. 15.
- ⁴³ Art. 3, Agreement of January 23, 1925, United States and The Netherlands, in this Journal, Vol. 22, p. 869. Compare Report of Fred K. Nielsen, pp. 39-40; Jessup, P. C., "The Palmas Island Arbitration," in this Journal, Vol. 22, pp. 735, 751, 752. For an instance in which a correct use of further explanations was made see the boundary arbitration between Colombia and Venezuela of 1922, Renseignements Complémentaires Présentés par les États-Unis du Vénézuéla au Haut Conseil Fédéral Suisse (1921).
 - 4 53 Statutes, 1564, 1565, Art. I.
 - 48 Proceedings of the Tribunal, 1922, Protocol II, Meeting of July 25, 1922, p. 16.
- ⁴⁵ Island of Palmas Arbitration: See Award of Tribunal, in this JOURNAL, Vol. 22, pp. 870-871; *Norwegian Claims Case*, above, note 45, Protocol V. Meeting of July 28, 1922, Protocol VIII, Meeting of August 2, 1922.

Other disputes which have arisen after sittings of the tribunal have begun concern the order of debates ⁴⁷ or the submission of pleadings not provided for in the *compromis*. In the *Pious Fund* case the tribunal permitted the filing by the United States of what was termed a replication, though no provision for it was made in the *compromis*. However, the consent of Mexico was first obtained and that consent was only given upon the condition that it be allowed a rejoinder.⁴⁸

PROCEDURAL PROBLEMS IN MULTI-CLAIMS ARBITRATIONS

Far more complicated are the procedural problems faced by arbitrations having for their purpose the settlement of numerous claims pending between states. The conflicting conceptions of procedure and evidence, on which comment has heretofore been made, clash with increased frequency. Interests of claimants must be reconciled with the insistent demands of economy and dispatch. Opportunities for dilatoriness must be minimized, but provision for the adequate preparation of cases varying widely in their complexity and importance must be made, and the commands of the *compromis* must ever be heeded. The essential problem is well stated by Judge Nielsen:

International tribunals created to adjust international claims are often required to determine a considerable, and sometimes a very large, number of cases. No efforts looking to a just disposition of each one should be spared in view of its importance from the standpoint of both private and public interest. But without any sacrifice in thoroughness of presentations and judicial determination, it would be feasible to simplify voluminous rules that are conducive to delays, prolonging the final presentation of cases; that teem with obscurities, frequently multiplying questions requiring judicial determination; that permit undesirable repetitions in the presentation of cases; and that, because of uncertainties, are in a measure responsible for friction between counsel.

When cases are few in number, and no time limit exists for the completion of hearings, when counsel possess similar views with respect to pleadings and presentation of evidence, and the respective governments desire that full consideration be given to the merits of each case, simple procedural rules are possible. These circumstances in large measure led to the successful conduct of the American and British claims arbitration under the agreement of August 18, 1910.⁴⁰ The pleadings to be filed were given only a very brief description.⁵⁰ The only requirement of a due date for their filing was that

- ⁴⁷ Dennis, above, note 2, at pp. 295-296, sets forth several instances in which differences of opinion arose concerning the order of oral argument.
- ⁴⁸ Cited above, note 21, at pp. 513, 514, 523. Compare the incident in the Alabama claims arbitration reported by Acrement, above, note 3, at 116–117.
 - Nielsen, F. K., above, note 3, at p. 67.
- ⁴⁹ Compare Le Roy, H. S., "American and British Claims Arbitration Tribunal," in *Journal of the American Bar Association*, Vol. 12, p. 156. For the text of the special agreement of August 18, 1910, and the rules of procedure, see *American and British Claims Arbitration*, Report of Fred K. Nielsen, 1926, pp. 3, 11.
 - 50 Rules 11-18, same, pp. 12, 13.

they should be prepared "with all dispatch" and filed "as soon as may be reasonably possible." With a full hearing accorded to each case it is not surprising that some five years were consumed in deciding the fifty-two groups of claims submitted. But remove any one of these favorable factors and such leisurely processes will no longer be possible.

The various tribunals set up between the Allied and the Central Powers under the treaties of peace closing World War I had facing them the duty of settling an unprecedented number of claims. 53 Expedition accordingly became the one primary requisite of procedure. Yet the procedural rules adopted by the European Mixed Arbitral Tribunals show little evidence of conscious effort to meet this requirement of expedition. The institution of the Clearing Offices, which inestimably lightened their task by the direct settlement of private debt claims, was not their creation but rather that of the authors of the peace treaties. The payment of debts, which were admittedly due or as to which an agreement could be reached by means of debiting and crediting of accounts between Clearing Offices representing each of the States provided a simple and expeditious way of disposing of claims outside of the Tribunals.4 The casting of the burden of preparation and defense of their claims upon individual creditors and debtors, 55 and the provisions made for the presentation of joint claims and the joinder of parties, 50 were impelled by the fact that most of the litigation which came before the Mixed Arbitral Tribunals was private in nature. The requirement that the pleadings were

13 Rule 10, same, p. 12.

14 Same pp. 24-36; Le Roy, above, note 49, at p. 157.

15 The British-German Clearing Office dealt with 382, 464 claims of which about 10,000 had to be considered by the Anglo-German Mixed Arbitral Tribunal, Hart, H. L. "Experiment in Legal Procedure," Law Journal, Vol. 72, p. 392. The United States-German Mixed Claims Commission had 20,430 claims filed before it of which over 12,000 were under the first treaty, that of August 10, 1922. 6,187 awards were rendered totalling \$186,813,-901.56, the remainder of the claims being dismissed or withdrawn, Hearing Before the Sub-Committee of House Committee on Appropriations, First Deficiency Appropriation Bill for 1933, 72d Congress, 2d Session 113. The foregoing sum does not include the award of approximately \$31,400,000 made in Lehigh Valley R. Co. et al. v. Germany, Opinions and Decisions in the Sabotage Claims Handed Down June 15, 1939, and October 30, 1939, at 324. The Tripartite Claims Commission between the United States, Austria and Hungary had 1,631 claims filed before it, Report of Robert W. Bonynge, 1930, p. 3.

State Papers, 1919, Vol. 112, pp. 1, 140; Treaty of Saint-Germain, Art. 248, same, pp. 317, 428; Treaty of Trianon, Art. 231, same, Vol. 113, p. 486 at 579; compare Hart, above, note 53.

**Compare Treaty of Versailles, Art. 296, Annex, clauses 16, 18, 112, above, note 54, at p. 144; Rules of Procedure, Anglo-German M.A.T., par. 3, Recueil des Décisions des Tribunaux Arbitraux Mixtes, 1922, Vol. I, p. 110; Rules of Procedure, Franco-German M.A.T., Art. 6, same, p. 46.

by Joint claims: Anglo-German M.A.T., par. 16, same, p. 112; German-Belgian M.A.T., Art. 44, same, p. 39; compare Franco-German M.A.T., Art. 16, same, p. 47. Joinder of parties: Anglo-German M.A.T., par. 17-21, same, pp. 112-113; German Belgian M.A.T., Arts. 37-43, same, pp. 38-39; Franco-German M.A.T., Arts. 19-22, same, p. 48.

to be filed within fixed periods one after another was not novel.⁵⁷ One interesting suggestion is afforded by the rules of the Anglo-German Tribunal which directed that no reply or rejoinder need be filed if it were only desired to deny the facts alleged in the preceding pleading.⁵⁸ But further saving of time without an undue sacrifice in the clarification of issues could well have been attained by dispensing entirely with these secondary pleadings,⁵⁹ instead of permitting their optional filing.⁵⁰

More noteworthy are the contributions of the German-American Mixed Claims Commission and the Tripartite Claims Commission between the United States, Austria and Hungary. They found very early that the laborious process of presentation by memorial and answer was too unwieldy an instrument for the rapid disposition of the many claims filed. If their task were not to be dragged out for years, some form of direct settlement was The innovations of the administrative decision and the use of agreed statements of facts furnished the solution. Owing to the fact that the claims were to be judged upon the basis of interpretation of treaty clauses, 51 it was possible to segregate them into certain classifications in regard to the disposition of which general rules could be laid down by the Commission in what were termed administrative decisions. The task of the application of these rules to specific cases was assumed by the respective Through direct negotiation they arrived at agreed statements of facts of individual cases. These were referred to the Commission for final Usually the review of the Commission was pro forma in nature and award was made in accordance with the recommendation of the Agents. When no agreement as to the facts of a case was possible submission by the

⁵⁷ Anglo-German M.A.T., par. 8, same, p. 110; Franco-German M.A.T., Arts. 13, 26, 28, same, pp. 47, 49.

⁵⁸ Art. 15, same, 111. Compare Rule 19, Rules of Procedure of the Nicaraguan Mixed Claims Commission, providing that absence of an answer would be equivalent to a general denial, *Report of the Nicaraguan Mixed Claims Commission*, 1915, p. 26.

⁶⁹ See William, J. F., "The Tribunal for the Interpretation of the Dawes Plan," in this Journal, Vol. 22, pp. 797, 799. The rules of the United States-Panama Mixed Claims Commission (Convention of July 28, 1926) make provision only for a memorial, answer, brief and reply brief and expressly prohibit amendments thereto, Arts. 13–17. The regulations of the Central American Court of Justice look primarily to the filing of a declaration, answer and dilatory pleas. Written or oral arguments may, however, be made, Arts. 50, 57, 73, 74 and 79, in this Journal, Supplement, Vol. 8, pp. 205, 206, 210, 211.

⁶⁰ Arts. 26, 28, Franco-German M.A.T., above, note 55, at p. 49; Art. 31, German-Belgian M.A.T., same, p. 37.

of Art. 1, Agreement of August 10, 1922, United States and Germany, 42 Statutes 2200; Art. 1, Agreement between the United States and Austria and Hungary, concluded with Austria on August 24, 1921, and with Hungary on August 29, 1941, and signed at Washington, November 26, 1924, 44 Statutes 2213. See Administrative Decision No. II (1923), Decisions, Mixed Claims Commissions, United States and Germany, 1925, pp. 5, 7; Opinion construing the phrase "naval and military works or materials" (1924), same, 75, 76; Note in Harvard Law Review, Vol. 40, pp. 752, 753.

customary means of memorial and answer was utilized or statement was made to the Commission of the views of the respective Agencies. 62

Had the basis for decision been responsibility under the general principles of international law instead of responsibility as admitted in treaty clauses, it is not probable that effective classification of cases could so readily have been made. The application of those rules to each case would raise factual and legal questions too intricate to be disposed of by broad generalizations. Not that administrative decisions would have been altogether precluded, but these novel procedural methods could be effectively used only because the cases, arising as they did principally out of the provisions of the Treaty of Versailles or its analogues, and relating to acts of war and war legislation of the Central Powers, naturally fell into distinct groups. And to this tendency further impetus was given by the simple legal basic decreed for their decision.

The conciliatory and business-like spirit in which the respective Agents approach their duties indicates a second factor on which will depend the success of any attempt to shift the power of settlement from the tribunal to the agents.65 That is, the existence on the part of agents, and in turn upon their respective governments, of a genuine desire not to insist-upon their every legal privilege. Hence it is not believed that the same degree of success would necessarily follow the unqualified adoption of similar methods by the typical international mixed claims arbitration. Much of its task is addressed to the final resolution of claims pending between nations which all the resources of diplomatic negotiations have failed to settle. Granted the existence of the utmost spirit of conciliation on the part of the agents, it is not likely that they could arrive at an agreement for the settlement of cases which have for so long been the cause of such sharp differences of opinion on the part of their respective governments. Moreover, it is no criticism of agents to point out that theirs is the approach of an advocate, rather than that of a conciliator. It is their duty to present their government's case to the tribunal in the strongest possible light; hence only rarely will settlement between agents supplant the traditional role of the tribunal. The experience of the General Claims Commission, United States and Mexico, as constituted under the Protocol of April 24, 1934,66 is illuminating in this con-It was contemplated that the cases would be decided by agree-

See Appendix, below; also Morgan, M. "The Work of the Mixed Claims Commission, United States and Germany," Texas Law Review, Vol. 4, pp. 399, 401-402.

⁶³ Compare Opinion in the *Lusitania Cases* (1923), above, note 61, at p. 17; Administrative Decision No. III (1923), same, p. 61.

⁸⁴ Compare Morgan, above, note 62, at pp. 401, 402.

⁶⁵ Compare addresses of Mr. Morris, Agent of the United States, and Dr. von Lewinski, Agent of Germany, at the opening meeting of the German-American Mixed Claims Commission, First Report of Robert C. Morris, Mixed Claims Commission, United States and Germany, 1922, pp. 9-11; Morgan, above, note 62, at p. 403.

^{66 48} Statutes 1844.

ment between two Commissioners, one for each government, with no third Commissioner to act as umpire; in other words a system of direct settlement between representatives of each State. It is understood, however, that the Commissioners were able to agree upon favorable awards in only 121 cases, 1,050 remaining undecided and the remainder being dismissed.

The experience of the American war claims arbitrations does, however, suggest a highly desirable procedural reform, which, it is believed, should be introduced in arbitrations of this type. Agents should be expressly granted the discretionary power to differentiate among claimants in the presentation of their cases and to negotiate settlements under the guidance of administrative decisions of the Commission. Hitherto the principle that each claimant must have his day in court — a principle lacking any effective implementation in international arbitration — has been deemed to include the consequence that each prima facie case is to be presented through the same course of procedure. But cases vary in complexity, importance and quality of supporting evidence. An adequate presentation of a claim involving a simple legal issue, such as a claim based on a charge of harsh and unusual treatment during imprisonment, can be procured without resorting to all the procedural steps necessary to clarify as complex a case as one involving the validity of a Calvo Clause. Similarly, a case whose evidence is insufficient and doubtful does not justify recourse to the lengthy and expensive process of presentation by way of memorial, answer, reply, brief, counter-brief, and oral argument. If procedure is to facilitate in the most effective way the functioning of the tribunal — which is its only role in any judicial system it must recognize that these differences in cases exist and enable counsel and tribunal to use for them special methods of treatment.

In his able handling of the interests of the United States before the American and Panamanian General Claims Arbitration, the American Agent took the step of rejecting, without submitting to the Commission, 40 out of a total of 133 claims in which it was clear that awards for damages would be unprocurable. Claims were also presented in groups rather than individually, when possible, 93 claims being uncompassed by 15 sets of pleadings. In regard to the great mass of cases where evidence is entirely lacking on one or more such vital points as nationality, and the time for its submission has passed, authority exists in any agent to submit them directly to the commission for dismissal. Settlement through agreed statements could be utilized in cases where the evidence is somewhat weak but sufficient to justify an award ex aequo et bono. However, as has been observed before, the successful performance of these and similar functions by the agents can only be expected if they, and in turn their respective governments, possess a sin-

⁶⁷ Report of the Agent for the United States, above, note 3, at pp. 10-12.

⁵⁸ Same.

⁶⁹ Lasry (U. S.) v. Venezuela (1903), Ralston's Report, Venezuelan Arbitrations of 1903, 1904, p. 37.

cere desire that claims shall be decided on their merits and not on technicalities.

Whatever cases cannot be disposed of by direct negotiation between agents or by dismissal - and in the usual mixed claims commission these will be many—they must be handled by some form of procedure. For the presentation of claims involving intricate issues of fact and law, the customary procedural processes of memorial, answer, and subsequent pleadings, including brief and argument, suffice. But for less complex claims, where the issue is usually whether as a matter of fact there has been a failure to meet a recognized international obligation, some simpler form of procedure seems suffi-Provision that all pleadings after the memorial and answer are to be optional 70 does not always result in the elimination of superfluous plead-Once let a defined course of procedure be begun, and the agent who is zealous to protect the interests of his government will not likely overlook any one of its steps. It is thought that only by providing special forms of procedure for the presentation of simple claims of this nature to the commission will dispatch be achieved without an undue sacrifice of the interests. This approach was taken in the Nicaraguan Mixed Claims Commission in which the rules of procedure provided for the filing of memorial and answer but made exception for several thousands of claims small in amount which had been filed with local boards. Such claims were considered upon their proofs without memorial or answer. 72 Another approach might be to utilize the mémoire, or case, as conceived of in the Civil Law, containing a discussion of the legal basis as well as the facts of a claim, for the presentation of such claims. The pleadings could then close with an answer prepared It would even be possible in some cases to go to the comalong similar lines. mission upon the first pleadings by providing that the absence of an answer should be deemed equivalent to a general denial.78

Enforcement of Procedural Rules

Once procedural rules are established by a commission, the difficulties then most likely to arise concern the matter of procuring adherence to the established rules and ensuring adequate protection for the interests of the party aggrieved by departure from them. Divergence of viewpoint as to the form and content of pleadings seems largely to have been overcome by the precise and complete description of the various pleadings contained in the

⁷⁰ Rule IV, par. 4 (a), Rule X, par. 2, General and Special Claims Commissions, United States and Mexico; Arts. 15 (a), 16, 37, German-Mexican Claims Commission; Arts. 15 (a), 16, 40, 41, Spanish-Mexican Claims Commission; Rule IV, par. 13 (a), 14, Rule XI, par. 41, Anglo-Mexican Claims Commission.

ⁿ Compare replies of the United States in joint claims of B. E. Chattin, et al. (Gen. Docket Nos. 40, 41, 42, 43), and in Charles E. Tolerton (Gen. Docket No. 921).

⁷¹ Above, note 58, at pp. 24-26.

⁷³ See the interesting suggestions of Judge Nielsen in his work cited above, note 3 at p. 68. Compare Rule 19, Nicaraguan Mixed Claims Commission, same, p. 26.

rules adopted by recent arbitral bodies. The practice of filing the pleadings in succession followed before commissions of this type also eliminates most of the handicaps to which the simultaneous exchange of pleadings gives rise.

Occasion may be taken, however, to advert to the tendency toward the introduction of dilatory motions which has manifested itself. In general, they are to be indulged in only when expedition is not essential, and then only upon the condition that full freedom of amendment be permitted. When, however, a defective or tardy pleading is filed, a motion to reject or similar dilatory plea serves the salutary purpose of sharply presenting to the tribunal the problem of the terms and conditions upon which departure from its rules shall be permitted. Fundamental in the consideration of the problem of a departure from the rules is not only the protection of the interests of the opposing litigant but also the fact that numerous other claims are clamoring for decision by the tribunal. Exaction of a reasonable compliance with its rules thus becomes essential. The implications attendant upon de-

The rules adopted by the General Claims Commission, United States and Mexico, have had a considerable influence in this direction. Their careful description of the memorial and of the answer reply and, Rule IV, par. 2, 3 (b), 4 (b), was adopted in identic or similar language by the Special Claims Commission, United States and Mexico, same; the Anglo-Mexican Claims Commission, Rule IV, par. 10, 12 (b), 13 (b); the German-Mexican Claims Commission, Arts. 11, 14 (b), 15 (b); Spanish-Mexican Claims Commission, Arts. 13, 14 (b), 15 (b); the Franco-Mexican Claims Commission, Arts. 11, 14, 15. As the result of this explicit description, it was the experience of the General Claims Commission, United States and Mexico, that the memorials and replies of Mexico in claims on behalf of her citizens were similar in form to the corresponding pleadings in American claims. E. g., Memorial and Reply of Mexico in Francisco Quintanilla (Mexico) v. United States (Gen. Docket No. 532); Garcia and Garza (Mexico) v. United States (Gen. Docket No. 292).

¹⁶ Motions to dismiss or reject: The rules of the General Claims Commission, United States and Mexico, as at first adopted permitted the filing of motions to dismiss or reject, Rule VII, par. 1–4. By a later provision their filing was denied on and after October 25, 1926. Rule VII, par. 6. Motions to dismiss or reject were, however, permitted by the rules of the Special Claims Commission, United States and Mexico, Rule VII, par. 1–4, of the Anglo-Mexican Claims Commission, Rule VII, of the German-Mexican Claims Commission, Arts. 21–24, and motions to dismiss were permitted by the Spanish-Mexican Claims Commission, Arts. 25–27, and the Franco-Mexican Claims Commission, Arts. 21–24. Demurrers (excepciones dilatorias), as provided for in the rules of the Anglo-Mexican Claims Commission, Rule V, the German-Mexican Claims Commission, Arts. 18, 19, and the Franco-Mexican Claims Commission, Arts. 18, 19, were intended to raise matters of defense not going to the merits of the claim, such as nationality.

⁷⁶ Compare Lynch (Great Britain) v. Mexico (1929), Decisions and Opinions of Commissioners, Claims Commission, Great Britain and Mexico, 1929–1930, p. 20. The German-Mexican Claims Commission considered dilatory pleas in connection with the decision on the merits. Feller, A. H., "The German-Mexican Claims Commission," in this JOURNAL, Vol. 27, pp. 74–76.

""No objection to procedural methods should be entertained unless it includes an adequate provision for curing the fault complained of." Sunderland, E. S. "Joinder of Actions," *Michigan Law Review*, Vol. 18, p. 571 at 588.

78 Compare Stroobant v. Wanner-Brandt (1921), above, note 55, Vol. I at p. 296 (German-Belgian M.A.T.).

lay in the filing of pleadings were graphically shown in the United States-Panama Mixed Claims Commission under the Convention of July 28, 1926. Its rules were drafted in specific contemplation of Article VI of the treaty which required the Commission to decide all claims within one year from the date of its first meeting. The rules stipulated a fixed date after which memorials should not be filed and declared that not more than two months should elapse between the filing successively of the answer, brief, and reply brief. Dilatory proceedings of any kind were expressly prohibited. Onsequently delays on the part of the Agent of Panama in filing his pleadings aggregating 62 months and 11 days created a great burden upon the Agent for the United States in preparing his responsive pleadings within the time fixed for the completion of the arbitration.

In principle the parties are expected in the course of the written pleadings to state all the facts and disclose all the evidence upon which they intend to rely. 22 In the Rio Grande case 83 before the American and British claims arbitration under the agreement of August 18, 1910, the British Agent attempted the late filing of a reply of voluminous size. The American Agent objected. The Tribunal held that it had no power to permit the introduction of the document. The American Agent, however, consented to its introduction upon the condition that full opportunity for the production of evidence by both sides be allowed. In these circumstances the filing of the The case itself was decided upon the jurisdicdocument was permitted. tional questions raised by the American Agent in filing a motion to dismiss. No provision was made in its rules for such a plea, but the privilege of the Agent to present it was sustained upon the ground of the inherent power of the Tribunal to raise for itself preliminary points going to its jurisdiction. The motion was in part based upon defects existing in the British memorial. It was asserted that this pleading was not drawn by the British Agent, that the exhibits relied on were not included therewith and that its citations and quotations were so inaccurate as to render it unfit for presentation to any judicial tribunal. Though these defects were held by the Tribunal not to be an adequate ground for dismissal, a different view might have been entertained had the motion related merely to the admissibility of the pleading.

The ruling of the General Claims Commission, United States and Mexico, in the *Deutz* claim ⁸⁴ is significant in this connection. The Mexican Agent

⁷⁹ 47 Statutes 1915, 1921.

⁸⁰ Rules, Articles 11, 14-17.

a Report of the Agent for the United States, above, note 3, at p. 18.

^{**} See Lister (Great Britain) v. Germany, VI, above, note 55, at pp. 34, 37 (British-German M.A.T., 1925); Sandifer, above, note 1, at p. 35.

²⁰ Rio Grande Irrigation and Land Company, Ltd. (Great Britain) v. United States (1923), American and British Claims Arbitration, Report of Fred K. Nielsen, 1926, p. 336.

⁸⁴ Adolph and Charles Deutz (United States) v. Mexico (Gen. Docket No. 2042). See *Minutes of Forty-Second Sitting, Fifth Session, General Claims Commission, United States and Mexico*, June 29, 1927.

filed an answer in which he made a general denial of the allegations of the United States and a reservation of the right to clarify his position. Upon a request by the American Agent for a ruling on the pleadings, the Commission stated that it recognized "no right on the part of either Agent to make reservations implying a right to present pleadings or amendments thereto or evidence in any manner at variance with the Rules." It further remarked that defenses which were properly for the answer could not be formulated after the answer was filed, that evidence not accompanying the pleadings could not be received, except through a stipulation entered into between the Agents, and that compliance with its reasonable rules was indispensable to the just determination of claims. 85 Criticism has been voiced against the action of the German-Mexican Claims Commission in deferring the consideration of dilatory pleas until the final decision on the merits. tended that the German Agency was by this practice left uninformed as to what course it should follow in the preparation of pleadings, as, for instance, in the matter of who are proper parties.89 It would seem preferable to have these and similar questions of law common to many cases settled as far as possible by means of administrative decisions rendered before the preparation of pleadings and the obtaining of evidence has begun. Administrative decisions need not be restricted merely to the enunciation of rules of conduct to be followed by agents in settling cases by agreement but may well be extended to the function of guiding them in the development of claims for the litigious procedure.87 Such a solution would minimize the delay and expense of deciding every dilatory plea as it was presented. These pleas tend to be concerned with objections not of consequence beyond the particular case and do not justify prolonging the sessions of the commission in order that they may be immediately settled as they arise.

Analogous questions of procedure are created when late submissions of pleadings or evidence are attempted. Here, the enforcement of the established procedural rules conflicts with a strong conviction on the part of tribunals that in the interest of a sound decision no pertinent document should be excluded. As stated in the Judgment of June 7, 1932, of the Permanent Court of International Justice respecting late submissions by the French Government: ". . . because the decision of an international dispute of the present order should not mainly depend on a point of procedure, the Court thinks it preferable not to entertain the plea of inadmissibility and to deal on their merits with such of the new French arguments as may fall within its

See in this connection Gonzalez (Mexico) v. United States (1926), Opinions of Commissioners, General Claims Commission, United States and Mexico, 1926–1927, at 10 (final decision on motion to dismiss postponed for thirty days in order to give opportunity to amend inadequate allegations). Accord, when jurisdiction is at issue: Kunkel (Germany) v. Poland, VI above, note 55, at pp. 334, 974 (German-Polish M.A.T., 1925); Vaterlaendischer Frauenverein à Czarnkow (Germany) v. Poland, same 346 (German-Polish M.A.T., 1925).

³⁰ Feller, above, note 76, at pp. 75, 76.

⁸⁷ Compare Administrative Decision No. V (1924), above, note 61, at p. 175.

jurisdiction." ⁸⁸ In the incident occuring in the *Rio Grande* case cited above the American and British Claims Tribunal said: "It would be most undesirable from every point of view if the Tribunal should attempt to decide a case without having all the documents before it which might turn out to be material in the course of the trial." ⁸⁰ But if late evidence be admitted in accordance with this view, the premise equally justifies granting to the opposing party an opportunity to obtain and submit rebuttal evidence. In the cases of the *Sidra* and the *Coquitlam* before the same Tribunal, Great Britain filed with its reply evidence which the United States considered should have been filed with the affirmative case. The United States accordingly deemed it proper to present, presumably in accordance with Rule 19, ⁹⁰ additional evidence as a supplemental answer. ⁹¹

The question of the admissibility of evidence should be entirely removed from controversy by providing in the *compromis* that the commission shall be bound to receive and consider all documents submitted, ⁹² or by ensuring that the rules of procedure enunciate in the most categorical terms what course of

⁵¹ The Sidra, Supplemental Answer of the United States; The Coquitlam, Supplement to the Answer. In Le Bas (Great Britain) v. Mexico (1929), above, note 76, at p. 65, final decision on a motion to dismiss was suspended in order to give the Agents opportunity to submit supplementary evidence. In the Alaskan Boundary arbitration, the British Agent requested an extension of two months for the filing of his counter case. After some correspondence, the Secretary of State informed the British Ambassador that the United States was not in a position to accede to the request since it was not shown that special difficulties had arisen, as required by the treaty, Proceedings of the Alaskan Boundary Tribunal, Vol. I, Report of John W. Foster, Agent of the United States, p. 10; Secretary of State Hay to Sir Herbert, June 16, 1903; U. S. Foreign Relations, 1903, p. 512. Compare Cobham (Great Britain) v. Venezuela (1903), Ralston's Report, above, note 69, at p. 409. See Accement, above, note 3, at p. 109:

An arbitral tribunal cannot refuse to take cognizance of a fundamental document under the stupid pretext that the period for its production has expired. The tribunal may not have recourse to exclusion except in the presence of evident bad faith.

See also Sandifer, above, note 1, sec. 2.

Clauses to this effect have been included in the following arbitration agreements: United States-Mexico, July 4, 1868, Art. II, Malloy, Treaties, Conventions, Etc., Between the United States of America and Other Powers, 1910, Vol. I, p. 1129; United States-Peru, December 4, 1868, Art. II, same, Vol. II, p. 1412; United States-Great Britain, May 8, 1871 (Treaty of Washington), Arts. XIII, XXIV, same, Vol. I, pp. 706, 710; United States-France, January 15, 1880, Art. V, same, p. 537; United States-Haiti, May 28, 1884, Art. III, same, p. 933; United States-Chile, August 7, 1892, Art. V, same, pp. 186–187; United States-Venezuela, February 17, 1903, Art. II, same, Vol. II, p. 1871; Mexico-Venezuela, February 26, 1903, Art. II, Ralston's Report, above, note 69, at pp. 876-877; Netherlands-Venezuela, February 28, 1903, Art II, same, p. 891; Belgium-Venezuela, March 7, 1903, Art. II, same, pp. 262–263; Sweden and Norway-Venezuela, March 10, 1903, Art. II, same, pp. 946–947; Spain-Venezuela, April 2, 1903, Art. II, same, pp. 918–919; Great Britain-Venezuela, May 7, 1903,

⁸⁸ Judgment No. 17, Series A/B, No. 46 (1932), p. 96 at 155-156.

⁸⁹ Above, note 83, at p. 334.

⁹⁰ Same, at p. 13. But compare the action of the Tribunal in the Fishing Claims, Group I, same, pp. 555-564.

conduct it will follow. 93 Where the *compromis* and rules are vague, 94 or even where they indicate rather clearly the intention that all forms of evidence shall be admissible, 95 disputes on this point arise. The adoption of such a rule should not be difficult since it seems to be well established that commissions are not bound by municipal rules of evidence and are free to consider all documentary evidence submitted to them and to give to it such weight as it may merit. 95

There are certain facts concerning international claims commissions charged with the disposition of an accumulation of claims which should be more appreciated. One is the complexity of the litigation with which they have to deal. Theirs is the work of an arbitration of a single dispute many times multiplied. As instance of this it is sufficient to point out that one memorial alone filed before the General Claims Commission, United States and Mexico, contained 1148 printed pages. 97 Many of the claims filed before commissions have been the subject of lengthy negotiations between states.98 Obviously they cannot be settled with the rapidity achieved by domestic administrative bodies handling far simpler matters of municipal law. must be drafted with a view to the nature of the disputes to be arbitrated, their complexity, the extent to which questions of fact or of law predominate, and the character of the evidence to be presented. It should further be remembered that the creation of an international claims commission does not par. 8, same, p. 295; Germany-Venezuela, May 7, 1903, Art. III, same, pp. 516-517; Italy-Venezuela, May 7, 1903, Art. III, same, p. 646; United States-Germany, August 10, 1922, Art. VI, 42 Statutes 2200.

- ⁹³ Compare Rule V (b), Mixed Claims Commission, United States and Germany. By Order No. 3, November 15, 1922, this Commission expressly ruled that it would receive ex parte affidavits or depositions.
 - ²⁴ Compare Shufeldt Claim, above, note 21, at pp. 9-14.
- ¹⁸ Convention between the United States and Mexico, September 8, 1923, creating the General Claims Commission, Art. II, above, note 1; Convention between Great Britain and Mexico, November 19, 1926, creating the British-Mexican Claims Commission, Art. 4, De Martens (3rd ser., 1931), Vol. 23, p. 8; Rules, German-Mexican Claims Commission, Art. 25. The Convention of March 16, 1925, providing for the latter Commission, was silent upon the admissibility of evidence, Feller, above, note 5, at p. 442.
- ⁹⁸ The Montijo (United States v. Colombia, 1875), Moore, above, note 1, Vol. II, pp. 1427, 1434, 1435; Parker (U. S.) v. Mexico (1926), above, note 85, at p. 35; Cameron (Great Britain) v. Mexico, British-Mexican Claims Commission (1929), above, note 76, at p. 33; Ernesto H. Goeldner (Germany) v. Mexico (No. 48), German-Mexican Claims Commission under Convention of March 16, 1925 (Ms. copy); Shufeldt (United States) v. Guatemala (1929) above, note 21, at p. 851; see Sandifer, above, note 1, sec. 2–4. Compare Murphy (U. S.) v. Chile (Case No. 36), United States and Chilean Claims Commission under Convention of August 7, 1892, discussed in Shields, Report of the Agent of the United States, 1894, pp. 150–157. See Act of July 3, 1930, 46 Statutes 1005.
- ⁹⁷ Sheldon L. Butler, et al. (U. S.) v. Mexico (Gen. Docket No. 2404). The Memorial in another was 484 printed pages in length, John W. De Kay (U. S.) v. Mexico (Gen. Docket No. 2718).
- ** The American and British claims arbitration under the agreement of August 18, 1910, was the first general arbitration between the two States since that established under the

relieve either foreign offices or agents of the responsibility to determine what claims merit being brought before it. A government should not lend its support to the vigorous prosecution of a claim before an international commission unless the evidence and law applicable to it would justify similar action in the diplomatic channel. Either through its foreign office or its agent, a government should determine what claims merit active prosecution before the commission. The temptation to evade this responsibility under the pressure and importunities of claimants and to cast upon the commission the task of reviewing and rejecting worthless, deficient or fraudulent claims may at times be difficult to resist. Yet a more energetic performance of this duty, such as, for example, occurred in the Panama claims arbitration discussed above, would considerably simplify the task of expediting proceedings of tribunals.

Conclusions

Procedure is no unalterable course of conduct to which all tribunals must adhere. It should always be adapted to facilitate the course of the particular arbitration and to enable the economical accomplishment of its task within the time fixed. In each arbitration the rules of procedure should be designed to reconcile the divergence of national viewpoints concerning procedure, to require of litigants no more procedural steps than are necessary to enable a satisfactory disposal of the particular case, to conserve litigants' interests from injury by departures from the contemplated course of proceedings, and to bring the arbitration to the speediest possible end compatible with justice. Only through a conscious and careful adaptation of procedural rules to the requirements of each arbitration as it arises will the procedural ills of international arbitration be minimized and its utility as a means for the settlement of disputes between states be fostered.

APPENDIX

Administrative Decisions and Agreed Statements as Used Before the Mixed Claims Commission, United States and Germany, and the Tripartite Claims Commission

Administrative Decisions: The rules of procedure directed that, upon being docketed, cases should be classified in accordance with categories defined by the Commission. Rule 6, clause (b2), German-American Mixed Claims Commission; Rule 9, clause (a), Tripartite

Convention of February 8, 1853. The Civil War claims were settled by the Commission sitting under the Treaty of Washington of May 8, 1871, *Moore*, above, note 1, Vol. I, pp. 683–702. The General Claims Commission, United States and Mexico, had jurisdiction over all unsettled claims presented to either government for its interposition with the other since the signing of the claims convention of July 4, 1868, see Art. I, Convention of September 8, 1923, above, note 1.

or Compare Frelinghuysen v. Key, 110 U. S. 63, 72–73 (1884), in connection with the Weil and La Abra cases, Moore, above, note 1, Vol. II, pp. 1324; Report of Secretary of State Bayard, Sen. Ex. Doc. 64, 49th Congress, 2d Session, Serial No. 2448, in connection with the Pelletier and Lazare cases, same, 1749, 1793; Bishop, above, note 3, at pp. 169, 170; see also Z. & F. Assets Realization Corp v. Hull, 311 U. S. 470, 486, 487 (1941).

Claims Commission. The announcement was made that the Commission would from time to time lay down general rules applicable to a particular category or sub-division thereof for the guidance of the respective Agents: Rule 6, clause (b4), German-American Mixed Claims Commission; Rule 9, clause (c), Tripartite Claims Commission. These decisions and other opinions were made the criterion for the determination by the Agents of whether a claim was a valid one under the treaty. Whenever, in the disposition of a case, a legal question arose between the Agents upon which they could not agree and which did not seem to be covered by any of the Commission's opinions it was submitted to the Commission for decision. If no legal question arose, and the claim did not appear to be a valid one, it was submitted to the Commission upon an agreed statement of facts for final action. It is understood that long lists of such cases were so submitted. Compare First Report of Robert W. Bonynge, Mixed Claims Commission, United States and Germany, 1925, pp. 3-4; Morgan, M. "The Work of the Mixed Claims Commission, United States and Germany," Texas Law Review, Vol. 4, pp. 399, 401-402.

Agreed Statements: Claims deemed valid by the American Agency were usually settled by a process of direct negotiation under the authority of Rule 11 of the Rules of Procedure of the German-American Mixed Claims Commission and Rule 10 of the Tripartite Claims Commission. Fundamental in the administration of this process was the procuring of the consent of the claimant, for no curtailment of his privilege to a hearing of his contentions by the Commission was permissible. Compare Report of Robert W. Bonynge, Tripartite Claims Commission, pp. 17-18. A conference took place in the office of the American Agency between the claimant or his counsel and an Attorney of the American and the German Agency where an agreement upon the facts was reached and a decision made on the part of the Attorney for Germany as to the amount of the award which he would not oppose. The agreement or stipulation so reached was submitted for review and signature on the part of the two Agents. No uniform practice existed as to the obtaining of countersignatures by counsel for claimants. In the event that the claimant disagreed with the proposed settlement, his position was set forth when the statement of the case was submitted to the Commission. Should his basis of rejection relate to the amount of the offer made on the part of Germany, no recommendation for an award in any specific sum was made but the Commission was requested to determine the amount to be awarded in the light of the facts as set forth in the agreed statement. Compare First Report of Robert W. Bonynge, Mixed Claims Commission, United States and Germany, 1926, pp. 3-4. If the Agents were unable to agree upon the facts, recourse was had to the formal method of presentation by memorial and answer, or statement was made of the opposing views of each for final decision by the Commission. Same, at p. 4. The claims of the insurance underwriters for losses on hulls and cargoes resulting from warlike operations furnish a typical instance of the use of the agreed statement. The statement was in form partly printed and partly typewritten and contained a general agreement on the basis of determining the financial liability of Germany for claims of this character, a recitation of the agreed facts of the case, and closed with the amount recommended for award.

CURRENT VIEWS OF THE SOVIET UNION ON THE INTERNA-TIONAL ORGANIZATION OF SECURITY, ECONOMIC COÖPERA-TION AND INTERNATIONAL LAW: A SUMMARY

By CHARLES PRINCE.

Political Analyst, Economic Research Department, United States Chamber of Commerce

The U.S.S.R. is destined to play a decisive role in establishing an effective international organization of security. Therefore a summary of current trends of thought and attitudes in the Soviet Union is here presented, reflecting its foreign policy and its views on the Dumbarton Oaks Proposals, the Bretton Woods Articles of Agreement, the legal status of the Polish Government-In-Exile, the treatment of Germany, the Chicago Civil Aviation Conference, the legal status of the Atlantic Charter and the situation in the Far East.

Lessons of History

Soviet spokesmen and writers have made it abundantly clear that they will not participate in any international organization if it be patterned after the "defunct" League of Nations. They are primarily concerned in creating a system of international organization with a view to obviating the recurrence of German aggression and to avoid the fatal mistakes of the Allies following World War I. The future international organization must be built on agreement, unanimity, and close cooperation of the main Great Powers of the anti-German coalition. Accordingly, Soviet spokesmen have been expounding their own concepts of an effective organization of security and of international law. Their thoughts are fully conveyed in this representative passage:

At the time of the signature of the armistice on November 11, 1918, the victor countries were preoccupied not only with settling the status of defeated Germany, but also with the problem of a military intervention against Soviet Russia, which resulted in a special secret clause providing for the Allies allowing German troops to remain on the Russian territories they then occupied, including, in particular, the Baltic countries. With the consent and help of the Allies, these German troops carried out military intervention in the Baltic countries, trying at the same time to strengthen German positions in the East and

¹ Academician Vladimir Potemkin, "Period Pered Vtoroi Mirovoi Voinoi I Borba Sovet-skogo Soyuza Za Mir" (The Period Before the Second World War and the Soviet Union's Struggle for Peace) in *Voina I Rabochii Klass*, No. 8 (September 15, 1943), and No. 9 (October 1, 1943). See also B. Shatrov, "O. Lige Natzii" (Concerning a League of Nations) in *Voina I Rabochii Klass*, No. 14 (December 15, 1943).

to acquire the necessary prerequisites for mitigating the terms of the future peace. This secret clause became the starting point for all kinds of schemes for using Germany as an instrument of aggression against Soviet Russia. At the time of the Paris Peace Conference, Germany tried to take advantage of this hostility of the Allies towards Soviet Russia and repeatedly offered her services for military intervention.^{1a}

One of the strongest arguments that is continually repeated in the Soviet press and radio as well as in academic journals is that the Treaty of Versailles was concluded without the participation of Soviet Russia. Since the Allies refused to recognize the Soviet Government, no Soviet delegates participated in the Peace Conference in Paris. David Lloyd George's attempt in January of 1919 to invite Soviet delegates to the discussion of the peace problems was strongly opposed by Georges Clemenceau and the right wing of the British Cabinet and thus proved fruitless. Moreover, not only was the peace treaty concluded without Soviet Russia but it was, in a sense, directed against her despite its annulment of the Treaty of Brest-Litovak. Germany and Poland were regarded by the Allies as an instrument of military intervention and their territories as bridgeheads for the invasion of the Soviet Union.

Similarly, the task of seeing to it that Germany obeyed the military clauses of the Treaty was very badly carried out. Lack of effective control enabled the Germans from the very first days after the signature of the Treaty to violate the disarmament clauses and to produce arms in secret. In addition, the decisions of the Treaty of Versailles on the surrender for trial of the war criminals were not put into effect. The whole procedure in this vitally important matter became a farce. The Soviets are therefore very apprehensive about a possible recurrence of those mistakes under the disguise of another League of Nations.

From the time of Hitler's assumption of power in Germany violations of the Treaty of Versailles and his open and loudly proclaimed preparation for aggression against Russia were the main factors which prompted the so-called "policy of non-intervention." It was this policy that enabled Hitler to denounce the military clauses of the Treaty of Versailles in 1935, to occupy the demilitarized Rhineland zone in 1936, to intervene in Spain jointly with Mussolini in 1936–38, to occupy Austria in 1938 and Czechoslovakia and Memel in 1939. This policy of leniency and downright help to Hitler found further expression in the conclusion of the Anglo-German naval agreement in June, 1935, by which Great Britain sanctioned the creation of a German fleet, 35% as large as the British, with a possible 100% parity in submarines, forbidden by the Treaty of Versailles, thus affording the Nazi Reich naval control of the Baltic. The same policy persisted in rejecting repeated

^{1a} Professor Boris Shtein, "Uroki Istorii" (Lessons of History), in *Voina I Rabochii Klass*, No. 16 (August 15, 1944), p. 18.

Soviet proposals for the creation of a real guarantee of collective security against Germany. In 1939 this policy led to the failure of the Anglo-French-Soviet talks on the creation of a Triple Entente. A year earlier it had led to the Munich agreement, which not only gave Czechoslovakia to Hitler, but attempted to create a four-power bloc formed without the Soviet Union and allegedly directed against it.

Hence Soviet radio commentators, journalists, academicians, and jurists are continually emphasizing the mistakes of Versailles and the post-Versailles period primarily with a view to issuing repeated warnings against recurrence of similar mistakes. "German aggression has cost mankind too dearly to allow a future peace treaty to repeat the fatal errors of Versailles."

Thus in presenting their proposals for an international organization of security one of Soviet Russia's astute writers outlined proposals for such an organization months before the opening of the discussions at Dumbarton Oaks. The fact is now being increasingly recognized that the leading and decisive role in the future security organization must be assumed by the great powers who gave proof by deeds in the present war of their greatness, inflexibility, and might. Moreover, in order to be effective, a future international security organization must be based on the strong and active leadership of the Great Powers which have demonstrated their strength in the present war. These powers which will form the central element of the new organization, must assume the obligation to organize resistance to aggression, if necessary, with their own armed forces alone, irrespective of the attitude of other members of the organization. The responsibility for maintaining peace must not be shared among sixty or more governments nor must it be laid on some impersonal organization. It must rest upon the few big powers possessing the necessary force for this purpose. Hence they regard it of the utmost importance that, for active participation in the fight against aggression in agreements, concluded among themselves, the Great Powers should also assume the appropriate obligations. The future organization should, therefore, be headed by a league of the Great Powers and not by states acting individually and separately and elected in turn. Similarly, in view of the tremendous responsibility which will fall on each of the Great Powers in consequence of this, the decisions of the directing organ and important questions will have to be taken unanimously. And, in any universal organization, no matter what it may be called, some of the Great Powers will have to bear the burden of putting the final decisions of the universal organ of authority into effect. These countries ought to be given, in a constitutional fashion, formal authority appropriate to their real and de facto responsibility. Therefore the Soviet scheme may well be regarded as being in accord with the basic realities of power politics in the post-war world.

Although questioning the scheme for setting up a big independent army under the future international organization as impractical, Soviet spokesmen

argue that they would permit and consider desirable the creation of an international air force under the international organization as a means of deterring and punishing the aggressors. The appearance of several hundred military aircraft over the capital of the state preparing for aggression cannot but produce the necessary effect. If a demonstration of this kind remains fruitless it can then be followed by the bombing of definite military objectives of the aggressor state: "We are convinced of one thing: that without the firm leadership of an alliance of the Great Powers no international security organization can exist which would not be threatened with the unenviable fate of the League of Nations."

In further elucidation of this principle the Soviet point of view states that there is no need to attempt the impossible task of insuring universal security without the leading and most active participation of the Great Powers. Obviously, in all cases in which the League of Nations displayed its inactions and failed, only the Great Powers could have stopped aggression; separately, in groups, and altogether. Likewise, it should be borne in mind that the decision to move against the aggressor must be accepted and applied in the shortest possible time, taking into consideration that nowadays wars are started by the aggressors without preliminary declarations and are prepared under conditions of the utmost secrecy. To substantiate this argument, Soviet publicists cite numerous events which occurred prior to the outbreak of the present war. Thus, considering the slowness of the League's procedure, inherent in any organization with many members, Hitler would have had enough time to destroy Poland, Belgium, and Holland and other small countries and thus to gather strength before the League Council and the Assembly could adopt and, what is more important, carry out any decisions. Here again only Great Powers could have effectively counteracted the aggressor as they have the necessary military and industrial resources. alliance of small powers can be substituted for them because the small countries would each be destroyed, in turn, by the aggressor and the destruction of each of them and the appropriation of their resources by the aggressor would strengthen his position vis-d-vis the Great Powers.

As is well known, there was no consensus of opinion and therefore no decision arrived at Dumbarton Oaks concerning the voting procedure of the Great Powers under Section C, Chapter VI. In fact the question of voting procedure in the Security Council was still under consideration after the conclusion of the discussions at Dumbarton Oaks.³ The area of disagreement centered around the principle of unanimity in the decisions of the Security Council projected at Dumbarton Oaks. The Soviets contend that

The first phase of the conversations between representatives of the United States, the

² N. Malinin, "Mezhdunarodnaya Organizatziya Bezopasnosti" (International Organization of Security) in *Zvezda*, No. 4 (April, 1944).

^{*} Dumbarton Oaks Documents on International Organization (Department of State Publication 2192), Washington, 1944.

the lessons of the League of Nations must be borne in mind, particularly with reference to the principle of unanimity for Assembly decisions which was one of the outstanding defects of the structure of the League. Their argument is that the League was unable to adopt effective economic sanctions against Italy for invading Abyssinia because of the objections raised by Switzerland, Austria, Hungary and Albania. Similarly, the Assembly resolutions were not in force because of the absence of unanimity in the case of the Spanish question in October 1937, and in the case of the Sino-Japanese conflict.

It is also contended that if the unanimity of permanent members of the Security Council is required for the settlement of all problems in general which are being considered by the Council, it would seem that such unanimity is the more necessary in cases of solution of important problems affecting the very existence and activity of the security organization, even should these problems affect the permanent members of the Council.

The Soviets are not adamant against adopting the most important decisions, including those on sanctions, by a majority vote only. Such a vote is sufficient for certain questions of organization and procedure; but for more important questions, imposing obligations on all members of the organization, a qualified majority might be advisable. They continually emphasize, however, the fact that the question of unanimity is only one of the serious difficulties that must be resolved if an effective international security organization is to be established. The other equally important principle is the realization that the Great Powers will have to bear the brunt of the responsibilities in effectuating the purposes of the proposals outlined at Dumbarton Oaks,⁴ and that the essence of the projected new organization of security was the unanimity of the five permanent members, i.e. the Great Powers.

Reaction to the Dumbarton Oaks Proposals

Having learned the bitter lessons of recent history, the Soviet Government has been preparing to be the arbiter of Russia's fate through a concert or balance of the three, four or five Great Powers. This policy does not preclude, according to its proponents, Russia's active participation in the creation of an international security organization. Accordingly, the Dumbarton Oaks Proposals for the establishment of an international organiza-

United Kingdom, and the Soviet Union took place from August 21 to September 28, 1944; the second phase, between representatives of the United States, the United Kingdom, and China, was held from September 29 to October 7, 1944.

Soviet representatives who participated in the conversations at Dumbarton Oaks were: Ambassador Andrei A. Gromyko, Chairman of the Delegation; Mikhail M. Yunin, Secretary; Grigori G. Dolbin; Professor Sergei A. Golunsky; Professor Sergei B. Krylov; Rear Admiral Konstantin K. Rodionov; Major General Nikolai V. Slavin; Arkadi A. Sobolev; Semen K. Zarapkin; and Valentin M. Berezhkov, Secretary-Interpreter.

'Leading Editorial: "Sovietskii Soyuz V Borbe Protiv Fashistkikh Agressii" (The Soviet Union in the War Against Fascist Aggression) in *Voina I Rabochii Klass*, No. 22 (November 15, 1944).

tion for the maintenance of peace and security are not an end in themselves. Soviet spokesmen have made it abundantly clear that the effectiveness of the Dumbarton Oaks Proposals will be contingent upon the continued faith on the part of the major powers in its efficacy as an instrumentality of cooperation. Similarly, they have also expressed the conviction that these Proposals should be maintained and developed⁵ in the hope of insuring a medium of international unity in crucial times.

One of Soviet Russia's authoritative writers propounded recently Russia's reaction to the draft charter adopted at Dumbarton Oaks. He has taken particular exception to Section C, Chapter VIII—Regional Arrangements.

Special doubts and even fears are evoked by the section bearing the designation "regional agreements," which is used in contemporary political literature as equivalent to blocs, spheres of influence, and similar associations. Such associations might produce results which have nothing in common with the tasks of the security organization and are even contradictory to them. When one speaks of an association of states in blocks, one has evidently in mind that some blocs will oppose others. Such blocs are nothing new—in any event their novelty has an old ring to us. The triple alliance and its counterpart the Triple Entente, which existed at the end of the last and beginning of the present century, were blocs. The Axis created by Hitler was also nothing more than a bloc of states which had to fight with states outside of that bloc. Such blocs do not decrease but rather increase the chances of war. From the point of view of peace nothing alluring can be found in the so-called spheres of influence. They are distinguished from blocs only by their being established by agreement among rival states but the division of these spheres is generally effected not on the basis of any objective criterion but in conformity with the correlation of forces and the political situation. With changes in this situation or in the correlation of forces the struggle commences for a redivision of the spheres of influence with all the possible consequences resulting therefrom. Furthermore, spheres of influence presuppose the domination of one state over others, which is incompatible with the basic principles proclaimed by the international security organization—the sovereign equality of all states.

It is worth while to record the fact that Soviet Russia's insistence on "security zones" as distinguished from "regional agreements" has so far not been delineated to any marked degree. Hence it is difficult to summarize their concepts of "security zones" as one of the basic principles upon which to base an international organization of security. The rationale of their plan is outlined in these terms:

In the establishment of the above mentioned security zones, two conditions must be observed: (1) The independence of the states in the

⁵ Leading Editorial: "K. Voprosu O Mezhdunarodnoi Organizatzii Bezopasnosti" (Towards the Problem of International Organization of Security) in *Izvestiya*, No. 241 (October 10, 1944).

zones must not be infringed; and (2) The delimitation of frontiers and of the areas of these zones should take place, in order to avoid international conflicts and disputes, only through agreements between the leading states of a given continent. All states need not by any means enter one or another of the zones.

Soviet activities in "liberated" areas are at variance with this statement yet they further contend that definite schemes may be proposed to solve the present problem and they would like to offer for discussion one such scheme which seems the most appropriate to them. This scheme may be summarized as follows: The General Assembly of the central security organization would be divided into four sections.

1. European

3. Asiatic-Pacific

2. American

4. African

States, territories, and possessions which are within the limits of the respective continents and ocean bases are included in each section. In doubtful cases, it would be specified in advance which state enters which section. They contend, also, that the advantage of such a proposed scheme is that subdivisions would not be severed from the main organization and would exist under the same roof with it, thanks to which not only the control organization but also the subdivisions themselves, which would remain inseparable parts of the main organization, would gain in prestige. Accordingly a substantial economy would be obtained since the subdivisions, in the form of sections of the Assembly, would be served by the Secretariat and by all of the auxiliary institutions of the main organization. The Soviets attach special importance to the avoidance of ambiguity and confusion in connection with the concept of "regional agreements," or "security zones."

Exponents of this Soviet scheme argue that such a system of international relations would preclude a new German attempt at aggression. Moreover, in the prewar period the Soviet Union was a most important factor in maintaining peace. It later played a decisive rôle in resisting a new German aggression and in crushing German schemes for world domination. Hence it is argued this rôle of the Soviet Union before and during the war should determine its weight in the post-war period and its position in the future international system of security and its apparatus.

Appraising the proposals in the light of current conditions and present prospects they may, therefore, be regarded as schemes and methods that would achieve the objective of finding a solid basis for a lasting post-war collaboration of the peace-loving countries in the interests of a stable peace. Also, much depends upon whether the Great Powers will prove able suc-

⁶ N. Malinin, "K Voprosu O Sozdaniye Mezhdunarodnoi Organizatzii Bezopasnostii" (Towards Setting Up an International Security Organization), in *Voina I Rabochii Klass*, No. 24 (December 15, 1944).

cessfully to settle the differences of opinion which exist and still may arise in this field and to overcome the obstacles to a lasting peace.

Another potent argument which Soviet exponents have been promulgating is that the projected international organization of security must be made capable of preventing new encroachments by German imperialism on the freedom and the independence of the peace-loving nations; otherwise new and still more horrible wars will ensue. It should have at its disposal effective means of preventing aggression and suppressing it if it made its appearance.⁷

The Soviet Union takes its stand on the principle of full and unreserved concerted action of the leading powers because the projected international organization of security would achieve its purpose only when the leading powers decided to make it effective and provided there will prevail an ever growing agreement and mutual confidence among them. Simultaneously, they argue also that it is difficult to forget the striking fact that,

While not a single member of the League recommended the expulsion of Poland for the seizure of Vilna or of Italy for her aggression against Abyssinia and Republican Spain (there were various other similar cases), the League contrived to secure the majority necessary for the expulsion of the Soviet Union (December 14, 1939), for depriving Germany, then preparing for an attack on the Soviet Union, of bridgeheads in good time. It is now quite impossible to deny that the Soviet Union was even then acting in the common interests of the United Nations.⁸

Apropos of this phase of the problem, it is worth recalling that, following her admission into the League of Nations on September 18, 1934, the then Soviet Foreign Commissar Maksim M. Litvinov pleaded for "indivisible peace" and effective collective security.

The Soviet Government thus propounded the thesis and stated quite definitely its position, to be given due attention by the other Powers at the conference in San Francisco:

1. The principle of unanimity and accord between the permanent members of the Security Council is an indispensable prerequisite for the successful and fruitful activities of the projected international organization to maintain peace and security.⁹ Theo-

Leading Editorial, "Ot Voine K Prochnomu Miru" (From War to Lasting Peace), in Voina I Rabochii Klass, No. 16, August 15, 1944.

⁸ Leading Editorial, "O Mezhdunarodnoi Organizatzii Bezopasnosti" (Concerning the International Organization of Security), in *Voina I Rabochii Klass*, No. 20 (October 15, 1944).

For a fuller statement of this argument, see Eyvgeni Zhukov, "O Yapono-Germanskikh Otnosheniyakh" (Concerning Japanese-German Relations), in *Bolshevik*, No. 7-8 (April, 1944).

⁹ A. Galin, "Rol S.S.S.R. V Splochenii Sil Slovobodolyu Bivekh Narodov V, Borbe Protiv Fashizma" (The Rôle of the U.S.S.R. Among the Peace-Loving Peoples in the Fight Against Fascism), in *Bolshevik*, No. 13 (July, 1943).

retically all sovereign States are juridically equal among themselves. Actually the Great Powers alone possess the manpower

and material resources to keep the peace.

2. The Soviets reject unqualifiedly the principle of depriving a permanent member-country of the right to vote on a question concerning its own interests. Hence some modus vivendi must be effected whereby one of the major powers that is also a permanent member of the Security Council will be permitted to be one of the judges rendering a decision affecting its own interests.

3. It seems that so far Soviet spokesmen have refrained from making specific suggestions bearing on (a) an international court of justice; (b) arrangements for international economic, social, and cultural coöperation; (c) post-war trade relations with the U.S.S.R. per se and with those countries liberated by the Red Army, especially with respect to patents, trademarks, copyrights, and

foreign investments.

4. From the very beginning of the Soviet regime political factors have played a paramount rôle in Russia's national economy and foreign policy; this has been especially true since the rise of Adolf Hitler to power on January 30, 1933. In fact, with the exception of the period between June, 1941, and June, 1943, even military exigencies have been given consideration secondary to those of political expediencies. This thesis has been continually emphasized by the Soviet press and radio, the Soviet delegations at Dumbarton Oaks and at Bretton Woods, and in Russia's academic journals.¹⁰

5. An examination of the writings of contemporary Russian legal students reveals that Soviet juristic thought appears to pay more heed to geopolitics and to economic factors than to the rôle of law in world order. Hence they advocate collective security, universal peace, friendly coexistence of nations, and validate the Soviet Government's course of action, however predatory, on legal grounds.

After hostilities in Europe have ceased, the Soviet Union will emerge as the major military Power in Europe and in the Far East and will thus exercise a corresponding major political influence in world affairs. Nevertheless, the deeply embedded anti-Soviet prejudice is hard to eradicate, as evidenced by statements published in the press in the United States. Nor can it be forgotten that about twenty states (especially Argentina, Portugal, Spain), which may in the future become members of the security organization, have to date failed to establish normal diplomatic relations with the Soviet Union, thus openly displaying their unfriendly attitude. Under such circumstances the Soviet Government cannot be expected to rely on the impartiality of the decisions of the "majority of the countries" in disputes which might threaten the Soviet Union's vital interests. The Soviet

¹⁰ L. Dmitriev, "Nekotoreye Probleme Obespecheniya Mira I Bezopasnosti Posle Voiny" (Some Problems of Guaranteeing Post-War Peace and Security), in *Voina I Rabochii Klass*, No. 15 (August 1; 1944).

Government has also taken cognizance of subtle obstructionists who are still active in influential American and British Government circles. Ha

This is also the basic thesis expounded in a book recently published by the Soviet Government.¹² The documents in this volume make it abundantly clear that the Soviet Government would prefer to regard the Anglo-Soviet-American coalition not as a temporary and emergency association but as one rooted in a community of fundamental interests among the people of the U.S.S.R., the United States, and Great Britain and, in fact, of all peace-loving people as an association to endure for a long time to come and intended not only to achieve complete victory over the common foe but to establish a stable and lasting peace and economic, political, and cultural coöperation among nations.

Similarly, this collection of documents stresses the fact that Soviet diplomacy, in fortifying and consolidating the anti-Hitler coalition, has leaned and will continue to lean on the power of the Red Army.

This policy has also been reflected in the armistice terms signed with the former Axis satellite states—Rumania, Finland, Bulgaria, and Hungary. That the Red Army will continue to be the paramount instrument of foreign policy is evidenced in Article 18 of the Armistice Agreement effected between the Governments of the United States, the Soviet Union, and Great Britain on the one hand and the Government of Rumania on the other:

An Allied Control Commission will be established which will undertake until the conclusion of peace the regulation of and control over the execution of the present terms under the general direction and orders of the Allied (Soviet) High Command, acting in behalf of the Allied Powers.

Annex to Article 18

Control over the exact execution of the armistice terms is entrusted to the Allied Control Commission to be established in conformity with Article 18 of the Armistice Agreement.¹³

It should be observed also that similar provisions were made in the Armistice Agreements with the three other former satellite Axis powers: Finland, Bulgaria, and Hungary. The economic reconstruction and political status

¹¹ Josif Lemin, "Anglo-Sovetsko-Amerikanskii Boevoi Soyuz V Deistvii" (The Anglo-Soviet-American Fighting Alliance in Operation), in *Mirovoye Khozaistvo I Mirovaya Politika*, No. 6 (June, 1944). See also Leading Editorial: "Boevoe Sodbuzhestvo Krepnet (Fighting Companionship Gains Strength), in *Izvestiya*, No. 251 (October 21, 1944).

^{11a} Molotov reiterated this charge in his address on April 26, 1945, before the United Nations Conference, although this serious allegation was little noted in the American press.

"Inostrannaya Politika Sovetskogo Soyuza V Otchechestvenoi Voiny" (Foreign Policy of the Soviet Union During the Patriotic War). Collection of Documents Relating to the Foreign Policy of the Soviet Union During Two and One Half Years of War, June 22, 1941–Dec. 31, 1943, Moscow, Ogiz, 1944.

13 Department of State Bulletin, No. 273 (September 17, 1944), p. 291.

of Czechoslovakia, Yugoslavia, and Austria will in a large measure also be determined in conformity with the policies emanating from the Kremlin. This is evidenced in the Soviet-Czechoslovak Agreement of May 8, 1944, signed in London, placing Czechoslovak territory under the supreme authority of the Soviet (Allied) military commander as it is liberated by the Red Armies, with a Czechoslovak administration to take over when the area becomes no longer a fighting zone. Indicative of the trends in Yugoslavia and their implications affecting all the Balkan countries are the recent pronouncements of Marshal Tito and the prominence given thereto. The twenty-year treaty of friendship and military alliance between the Soviet Union and Yugoslavia, effected on April 12, 1945, is an integral part of the pattern reflecting Russia's current foreign policy.

Concerning the perennial controversy over Bessarabia, the former Premier of the U.S.S.R. stated that "the Soviet Union had never recognized the seizure of Bessarabia by Rumania; although it had also never raised the question of recovering Bessarabia by military means." ^{15a} The Soviet Government asserted its rights to Northern Bukovina in similar terms.

Similarly, Ruthenian irredentism has received active encouragement from the Soviet Government. The occupation of Sub-Carpathian Ruthenia by the Red Army has recently been followed by demands that this area be incorporated with the Soviet Ukraine, the Soviet-Czechoslovak Pact notwithstanding. Also, in pursuance of Article 19 of the Armistice Terms of September 12, 1944, for Rumania, Ibb Marshall Stalin sent a letter dated March 9, 1945, to Prime Minister Peter Groza authorizing the Rumanian Government to take over control and administration of Northern Transylvania. The psychological effect of this action is obvious. "It will be warmly received by the Rumanian people and by peoples far beyond the boundaries of Rumania." Ibc

Legal Status of the Polish Government-in-Exile

One of the serious difficulties which has threatened the unity and effectiveness of the United Nations is the situation in Poland and the consequent

¹⁴ For text of agreement, see United Nations Review, July 15, 1944.

¹⁶ Marshal Yosip Broz-Tito, "Borba Narodov Poraboshchennoi Yugoslavii" (The Struggle of the Peoples of Subjugated Yugoslavia), in *Bolshevik*, No. 10–11 (May–June, 1944). This article was translated into ten languages and published in as many pamphlets by the Gosudarstvennoe Izdatelstvo Politicheskoi Literatury.

Marshal Yosip Broz-Tito, "Znacheniye Roshenii Antifascistskogo Vecha Narodnogo Osvobozhdeniya Yugoslavii" (Significance of the Resolution of the Anti-Fascist Veche for Yugoslav National Liberation), in *Slaviyane*, No. 5 (May, 1944).

^{15a} Text of the Report by Premier Vyacheslav M. Molotov to the Sixth Session of the Supreme Council of the U.S.S.R. on March 29, 1940, in Mirovoye Khozaistvo I Mirovaya Politika, No. 3 (March, 1940). p. 5. At present, Mr. Molotov is People's Commissar for Foreign Affairs of the U.S.S.R.

185 American Review on the Soviet Union, Vol. VI, No. 2 (February, 1945), p. 64.

160 Pravda and Izvestiya, March 10, 1945.

state of affairs brought about by the Soviet Government. On the day Soviet troops invaded Poland, on September 17, 1939, the then Premier and Foreign Commissar delivered a radio address wherein he did not deny the fact that this move was a breach of the Treaty of Non-Aggression which the Soviet Union made with Poland on July 25, 1932, which was extended by the Polish-Russian Protocol of May 5, 1934. This treaty was to remain in force until December 31, 1945. He contended, however, that

The Polish State had become a field for any incidental and unexpected contingency that may create a menace to the Soviet Union. Accordingly the Soviet Government could not remain indifferent to the fate of its blood brothers, the Ukrainians and White Russians, who . . . now have been abandoned entirely to their fate. . . . ¹⁶

A series of complicating circumstances has occurred since this pronouncement was made, resulting in deteriorating relationship not only between the Kremlin and the Polish Government-in-Exile (London) but also between the Governments of the Soviet Union and Great Britain.

Soviet writers, radio commentators, and spokesmen are continually reiterating that the friendly attitude of the Soviet Government and peoples to their brother Polish people is no casual occurrence. On the contrary, it is to be explained by the constant wish of the Soviet Union to respect the sovereignty of the Polish people. Suffice it to recall that the Great October Revolution was the most important prerequisite for the revival of an independent Polish state. Military and political events during the years 1943–1944 have made it abundantly clear that an independent Poland will again come into being only through the help and tutelage of the Soviet Government. In fact,

The Soviet Government has repeatedly declared that it desires to see Poland strong and independent, after the defeat of Nazi Germany. The agreement concluded on July 26th this year (1943) on the relations between the Soviet Commander-in-Chief and the Polish Administration after the entry of Soviet troops into the territory of Poland incontestably proves that the Soviet Government has no intention of interfering with the internal affairs of the Polish people and that it claims no part of Polish territory and contemplates no change of the social order in Poland.¹⁷

Moreover, in its communiqué of January 20, 1944, the Soviet Government proposed that Poland should take German territories extending to the Oder

¹⁸ Vyacheslav M. Molotov in *Pravda*, September 18, 1939. Excerpts of this radio address were also published in *The New York Times*, September 18, 1939.

¹⁷ D. Anishev, "Polskii Narod Na Dorogu Do Svobodu I Nezavisimosti Osvobozhdenii" (The Polish People on the Road to Freedom and Independence), in *Bolshevik*, No. 13-14 (July, 1944). The monetary decree issued by the Soviet-sponsored Lublin government on January 15, 1945, and the land reform that is now being executed, as well as the socialization of basic industries and other economic activities would tend to refute the Soviet contention about a "free" and "independent" Poland.

River, including East Prussia and Upper Silesia. This statement caused widespread and adverse reaction in the United States and in Great Britain; but this did not deter the Soviet Government from pursuing its policy and translating it into practice, commensurate with its own political expediencies. Despite the efforts made on the part of the United States and British Governments to mediate in behalf of Poland, the Soviet Government continued to put its policy into practice regardless of loss of life sustained in its prosecution. The Soviets contend that Poland, as well as her other western neighbors, must cease to be a corridor for any new attempts at German aggression. Moreover, according to Marshal Stalin's repeated assurances, their neighbor must be a free, strong and democratic Poland which has once and for all renounced aggressive designs against the Ukrainian and Byelorussian peoples. "It is in the interest of the Soviet Union that Poland be strong; hence Poland is going to play a very important rôle in Europe." 18

Therefore, in consonance with their announced policies, the Provisional National Government of the Polish Republic was formed on December 31, 1944, and was at once recognized by the Praesidium of the Supreme Soviet of the U.S.S.R. This is an outgrowth of the Polish Committee of National Liberation (Lublin) which was announced on July 22, 1944, in Moscow, on the basis of a secret meeting of leaders in Warsaw on New Year's Day of 1944. Parenthetically, it may be observed that it is doubtful whether the agreement effected at the Crimea Conference will change the basic structure of the newly established Provisional Polish Government sponsored by the Soviet Union.

In fact, the Crimea communiqué appears to affirm Soviet Russia's policies and activities in Poland:

A new situation has been created in Poland as a result of her complete liberation by the Red Army. This calls for the establishment of a Polish Provisional Government which can be more broadly based than was possible before the recent liberation of western Poland. The Provisional Government which is now functioning in Poland should therefore be reorganized on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad. This new government should then be called the Polish Provisional Government of National Unity.¹⁹

In justification of its policies in Poland, Soviet authoritative writers have challenged the legality of the Polish Government-in-Exile, contending that this government is not the lawful constitutional agency of the Polish state and as such cannot bear the slightest scrutiny.

The Soviets contend that "The Polish émigré Government was organized in flagrant violation of even the constitution of 1935. This Government, on

¹⁸ Professor Oscar Lange of the University of Chicago made this announcement on his return trip to the Kremlin and reported in *The New York Times*, May 22, 1944.

¹⁹ "The Crimea Conference," in *Department of State Bulletin*, Vol. XII, No. 295 (February 18, 1945), p. 215.

the basis of decrees, had appropriated powers for itself devoid of any legal basis, since these powers came from persons who at that time did not possess the necessary rights and powers to issue such decrees." ²⁰

After Pilsudski's coup d'état in May, 1926, the Polish democratic constitution was amended, with a view to making Poland "authoritarian" under the demagogical guise of "cleansing" her (the notorious sanacja). When Pilsudski was dying his adherents deemed it necessary to legalize the anti-democratic regime, which had nothing in common with Poland's written constitution of 1921 and was maintained mainly by Pilsudski's personal influence.

On April 23, 1935, a new Polish constitution was proclaimed. In order to obtain the Sejm's approval for it and to create an artificial parliamentary majority for that purpose, the Government first dissolved the Sejm, dealing a blow at all parties of the parliamentary opposition, and then held an election under administrative and police pressure unparalleled even under Pilsudski's regime.

The Polish constitution of 1935 concentrated all power in the hands of the President, the role of the Parliament being reduced to naught. This constitution and the election laws published on July 8, 1935, deprived the broad masses of the population of participation in the election of the President and the Seim, giving this privilege to special election committee composed of persons appointed by the government. The Polish population boycotted the election to the new Seim on September 8, 1935, and more than two-thirds of the electorate refrained from voting.

On the basis of the 1935 constitution, never endorsed by the Polish people, the Raczkiewics-Sosnkowski émigré Government considers itself Poland's lawful Government. Professor Korovin argues that even from the point of view of the 1935 constitution it cannot be considered as lawfully constituted. Raczkiewicz was appointed President of the Polish Republic by a decree of the former President Moscicki on September 17, 1939. Some advocates of the Polish émigré Government believe that this appointment was quite lawful and in accordance with clause 24 of the 1935 constitution, which says: "In the event of war, the President of the Republic shall appoint his successor by a special decree published in the government's journal, should his office become vacant before the conclusion of peace." Thus it is obvious that the President can\appoint a successor only if he himself exercises his powers as President, the government is functioning, and the decrees it issues are published in its official journal, etc. But at that time—September 17, 1939, the Polish Government was actually no longer in existence, President Moscicki, as well as the other leaders of the Polish Government, having left the country to its fate and themselves escaped soon after the German invasion.

²⁰ Professor Eyvgeni Korovin, "Kakova Pravovaya Osnova Polskogo Emigranskogo Pravitelstva?" (What is the Legal Background of the Polish Emigré "Government") in *Voina I Rabochii Klass*, No. 14 (July 15, 1944), p. 28.

President Moscicki, who fied to Switzerland, "could not have transferred either to Raczkiewics, or to any one else, the plenary powers which he was not in the position to exercise." These pronouncements intensified the open rift between the Polish and Soviet Governments.

The series of countercharges in connection with the murder of Polish officers in the Katyn Forest beyond Smolensk caused the Soviet Government to sever relations with the Polish Government on April 26, 1943. Similarly, "the Soviet Government's execution of the two Polish Social Democratic leaders, Henryk Ehrlich and Victor Alter, at the end of the year 1941" aroused organized labor's protest in the United States and in Great Britain. However, "The interests of Poland, the interests of our Union, the interests of our Allies Czechoslovakia and the Balkans, and the security of France and all Europe imperatively demand the triumph of historical justice when a new border between Prussia and Poland comes to be defined." ²²

The Soviets are aware that their recent unilateral action in Poland is inconsistent with the letter and spirit of the Atlantic Charter, but they received the tacit consent of President Roosevelt and Prime Minister Churchill at the Crimea Conference. They are also aware of the fact that the legal status of the Polish Government is a very important consideration as far as the Soviet Government is concerned. This is due to the fact that a legitimate Polish Government will have to cede territory which was under Polish jurisdiction during the past twenty-five years; it will also have to annex German territory which the Red Army will occupy and incorporate this newly acquired German territory into Poland. In addition the newly constituted Polish legal Government will have to form alliances with the Soviet Union and with Czechoslovakia; it will also have to become a major enforcing power of the German settlement, which is of supreme importance to the U.S.S.R.²²

This series of events corroborates the observation that the political, economic, military, and social structure of liberated Poland during the next few years will be directed in conformity with policies envisaged by the Soviet Government; and the newly constituted Polish Provisional Government of National Unity will function accordingly.²⁴

- ²¹ Note of Alexander Bogomolev, who was the accredited Soviet Ambassador to the Polish Government-in-Exile (London), dated March 31, 1943 and addressed to Count Edward Raczynski, Polish Minister for Foreign Affairs.
- ²² Academician Eyvgeni Tarle, "K Voprosu O Budushchei Zapadnoi Granitze Polishi" (Concerning the Question of Poland's Future Western Frontier) in *Voina I Rabochii Klass*, No. 18 (September 15, 1944), p. 28.
- ²⁵ A. Troyanovsky, "O Granitzakh Polski" (Concerning Polish Frontiers) in *Bolshevik*, No. 7-8 (April, 1944).
- ²⁴ Apropos of the Soviet allegation it is noteworthy to observe the statement on the "Lublin Committee" made by British Foreign Secretary Anthony Eden in the House of Commons on March 1, 1945:

Whether we like or dislike the Lublin Committee—and personally I say I dislike it—for the moment it is the authority which is functioning there in fulfilling the requirements of The Soviet Union's Current Views on the Treatment of Germany

The men who direct Soviet Russia's destinies made it clear early in the war that it was not their aim to exterminate the German people or to destroy the German State. Marshal-Premier Stalin disavowed such aims in no uncertain terms. In a well-known directive he stated:

The Red Army does not have and cannot have such idiotic aims. The Red Army's aim is to drive the German occupants from our country and liberate Soviet soil from the German-Fascist invaders. It is highly probable that the war for the liberation of the Soviet land will lead to the expulsion or annihilation of the Hitler clique. We should welcome such an outcome. But it would be ridiculous to identify Hitler's clique with the German people and the German state. History shows that Hitlers come and go but the German people and the German state remain.

... The strength of the Red Army lies in the fact that it has not, nor could it have, any racial hatred for other people, including the German people, and that it has been educated to believe in the equality of all peoples and races and to respect the rights of other peoples. The race theory of the Germans and their practice of racial hatred have resulted in all freedom-loving nations becoming the enemies of fascist Germany.²⁵

Equally precise in his promulgation of Soviet Russia's point of view was Foreign Commissar Molotov in his note of April 27, 1942, wherein he submitted corroborative evidence testifying to the monstrous atrocities perpetrated by "Hitler's army of thieves and murderers against the civilian population and captive Red Army men in the Soviet region."

It is with these nefarious plans that the German fascist hordes invaded our country. These Hitlerite gangster plans have found their reflection in numerous orders of the German Military Command.

Of the vast quantity of documents and facts at its disposal, the Soviet Government hereby brings to the attention of all nations new documents and facts which not only confirm the systematic nature of the crimes

the Russian military authorities. We have in no sense recognized this Lublin Committee (cheers) and we have no intention of recognizing the Lublin Committee.

We do not regard it as representative of Poland at all and let me add that when Prime Minister Churchill and I met the representatives of this Committee in Moscow they did not make a favorable impression upon us at all. There is no question; the House need not be anxious about our affording recognition to them.

be anxious about our affording recognition to them.

It does not surprise me to hear, for instance, as I was told today, that the Lublin Radio is pouring out streams of contentious stuff. I have no doubt what that Committee wants. Their purpose is to maintain the position they already hold, but that is not what we want, nor is it what the Yalta Conference decided upon.

We have recognized this Government in London which has gone through many changes and we shall continue to recognize it until the new Government is created, if it is created, and only if the new Government is broadly representative of the Polish people.

For a presentation of the Polish point of view, see the statements made by the Polish Government-in-Exile in Polish Facts and Figures, No. 14 (January, 1945) and No. 15 (March, 1945).

²⁸ Order Of The Day of the People's Commissar of Defense Josef V. Stalin, No. 55 (February 23, 1942): Soviet War Documents, 1943, p. 24.

described in the notes of the Government of the U.S.S.R., of November 25, 1941, and of January 6, 1942, but which also show that the Hitlerite rulers and their accomplices have reached the limit of cruelty and moral degradation in their bloodthirsty and criminal assault on the freedom, well-being, culture, and very life of the Soviet people.²⁶

Moreover, the official Soviet statement served notice that it is not their aim to avenge in kind all the monstrous crimes committed by the German fascist invaders:

In spite of all this, the Soviet Government, true to the principles of humaneness and respect for its international obligations, has no intention, even in the existing circumstances, of applying retaliatory repressive measures against German war prisoners, and continues as hitherto to observe the obligations undertaken by the Soviet Union with regard to the regime of war prisoners according to the Hague Convention of 1907 which was likewise signed but so wantonly violated in every one of its points by Germany.²⁷

Perhaps the most significant pronouncement affecting Soviet Russia's attitude toward post-war Germany was made by Marshal Stalin on the occasion of the 25th Anniversary of the October Revolution, an annual event when the Russian Chief of State has made outstanding pronouncements affecting Soviet Russia's foreign policy.

It is not our aim to destroy all organized military force in Germany, for every literate person will understand that this is not only impossible in regard to Germany, as it is in regard to Russia, but also inadvisable from the point of view of the future. But Hitler's army can and should be destroyed.²⁸

This view appears to be consistent with that expounded by authoritative spokesmen prior to the outbreak of the present war, namely, that "The Soviets have always been of the opinion that a strong Germany is the necessary prerequisite for a durable peace in Europe." This statement was made by the People's Commissar of Foreign Affairs on October 31, 1939.

As to why the United States fights against Hitlerite Germany and its consequent effect on post-war peace and security, the official Soviet view is that the present war between Hitlerite Germany and the United States began on April 1, 1939, five months before England went into war against Nazi Germany. The occasion was the launching of the battleship Von Tirpitz. At

²⁶ Note Submitted by Vyacheslav Molotov, People's Commissar for Foreign Affairs of the U.S.S.R., 1942, p. 4. This note was sent on April 27, 1942, to the Ambassadors and Ministers of all countries with which the U.S.S.R. maintained diplomatic relations. In addition to this note, this book contains documents and photographs testifying to the monstrous crimes, atrocities, and acts of violence perpetrated by the German fascist invaders in the occupied Soviet areas and the responsibility of the German Government and Military Command for these crimes.

²⁷ Molotov, as cited, p. 39.

²⁸ Soviet War Documents, June, 1941-November, 1943, Washington, 1943, p. 41.

that time Herr Hitler spoke at length concerning the necessity of establishing an effective link among German elements the world over and concluded with a threat to England's naval supremacy. In so stating the problem, Hitler threatened not only Great Britain but the United States as well. His effort to undermine England's naval supremacy was a direct attempt to restrict the freedom of action of the United States on the seas and, above all, on the Atlantic Ocean.²⁹

Moreover, the former Soviet Ambassador to the United States contends that within the borders of the United States itself foreign fascists were not without influence. The German-American Bund headed by Fritz Kuhn, a naturalized American citizen, worked openly and without interference. Kuhn received substantial support from American magnates and capitalists. Mr. Troyanovsky lists the various nation-wide subversive activities that were carried on by this Bund and points out that, according to the 1930 Census, 1,609,000 persons living in the United States were born in Germany. These people, both aliens and naturalized citizens, formed a powerful nucleus for the dissemination of vicious Nazi propaganda. The author comes to the conclusion that the United States is fighting Nazi Germany primarily because of Hitler's political and economic penetration in South America.

As examples of this penetration—which constituted a grave threat to the safety of the United States—Mr. Troyanovsky cites many facts. The Germans through Kondorsyndicate operated the airlines in Brazil. The same syndicate maintained connections between Buenos Aires and Santiago. In Colombia the airlines were largely controlled by the Germans. They also dominated the airlines between Lima and Buenos Aires, and between Lima and Berlin. Similarly, they controlled several large radio stations in Latin America.

In order to counteract the economic influence of Germany and in order to compensate the Latin American countries for their losses of German markets as a direct result of the present war, the Congress of the United States appropriated \$500,000,000 to the Export-Import Bank for the purpose of providing credit with which to stimulate trade between the United States and Latin American countries. "However, even these far-reaching measures did not entirely displace the tendency of Latin American countries to continue to develop economic relations with Germany." *10**

In addition, the United States fights Hitler's Germany because fascism is the mortal enemy of freedom and liberty, of racial tolerance, of equality of opportunity. It is in defense of these democratic principles that a coopera-

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²⁹ Alexander A. Troyanovsky, *Pochemoo Soyedinoneye Shtate Voyooyoot Protiv Gitlerovskoi Germanii* (Why the United States Fights Against Hitlerite Germany), Moscow, 1942. For a comprehensive summary of this thesis, see review of this book by present writer in *Political Science Quarterly*, Vol. LIX, No. 3 (September, 1944).

[№] Troyanovsky, p. 37.

tion of the Soviet Union, Great Britain, and the United States had become increasingly close in the hope of defeating a common enemy.

Nature of Retribution

In consonance with Soviet political expediency and various economic factors, Soviet proponents are equally clear in their proffered plans to exact retribution from the German people commensurate with the loss of life and devastation suffered by the Russian people. The contention is to the effect that they can ill afford the risk of having the United Nations repeat the same grave errors which the Allies made following the Armistice of the first World War.

Accordingly, Soviet justice and political expediency demand a different approach to the payment of reparations by Hitlerite Germany and her satellites. Compensation for material damage should be made before anything else; only when this has been done should payments begin in compensation for personal damage. Moreover, contributions when received should not be distributed among the various countries in proportion to the absolute damage they have suffered. Rather, payments should be made to those countries whose damage is the largest compared with their total national wealth. Likewise reparations must be paid first to the countries which have suffered most, including the Soviet Union, which has undoubtedly suffered the greatest absolute damage and also most likely the greatest relative damage—i.e., in proportion to its national wealth.

The detailed plan worked out by the Director of the Economic Institute in Moscow calls for Germany to pay more than 15 billion marks per annum. Professor Varga postulates his analysis on Germany's capacity to pay on the plan that, since there will be no expenditure for armaments, on which Germany spent an average of 15 billion marks per annum, these sums and more can be applied to the payment of reparations. As for the method by which payments should be made, Soviet political economists argue that the main stress should be made on deliveries in kind, which, in turn, is the only possible method whereby they expect to exact reparations from Germany. They are quite frank in stating that for the Soviet Union, with its planned economy, under which no discrepancy between production and consumption is possible and in which the supply never exceeds the demand,—with the consequence that economic crises are out of the question,—it would be positively desirable to receive compensation for damage done not in the form of money but in the form of goods and manpower.

Soviet proponents of this plan are aware of the basic tenets of international law and that in carrying out their projected plan of retribution they may not comply with generally accepted principles of international law affecting

³¹ Academician Eyvgenii Varga, "Vozmeshcheniye Ushcherba Gitlerovskoi Germanniye I Yeyo Soobshchnikami" (Reparations for Damages Caused by Hitlerite Germany and Her Satellites), in *Voina I Rabochii Klass*, No. 10 (October 15, 1943), p. 10.

requisitioning of manpower. However, Soviet exponents argue that the extent of the crimes committed by the Germans has had no precedent in history. Also the Hitlerite bandits trampled upon international law and forcibly deported to Germany millions of peaceful citizens from the occupied countries, particularly from the conquered regions of the Soviet Union, and compelled them to produce weapons for the struggle against their own country. Hence the Soviets have been promulgating their concept of justice in so far as retribution is concerned and they have thus expounded the principle of "payment in kind." Translating this principle into practice, the Soviet Government has already set up the machinery whereby Germans will be made to take part in repairing the railroads, bridges, cities, and factories which they destroyed during the war. Clearly the question of reparations to be exacted from Germany is interwoven with the task and ability of keeping and insuring an enduring peace.

Professor Tarle and other Soviet academicians argue that they realize full well that there is only one way really to render Germany harmless and that is to weaken Prussia, which has always played the part of robber chieftain and which organized and led the rest of Germany in rapine. And Prussia, again, can be weakened in only one way namely by tearing from its clutches those dismembered parts of Poland which have so long suffered an indignity at the hands of generation after generation of Prussian butchers from Frederick II to Bismarck and from Bismarck to Hitler and which notwithstanding everything remained Polish.²²

It is worthy of note also that neither the United States nor Great Britain will necessarily depend on deliveries in kind for the restoration of their national economy; hence these two countries might have their reparation claims satisfied partly by the transfer to them of the foreign investments of the aggressor countries, whereas the countries which have suffered from aggression to a far greater degree will be in dire need of movable property of all kinds: machine tools, industrial machines, railways, tools, locomotives and cars, motor vehicles, ships and steamboats, livestock, coal, metals, seed, and other agricultural products.

Jurisdiction Over Master-War Criminals

Consistent with their general foreign policy, proponents of Soviet Russia's treatment of war criminals have repeatedly stated that they will not be guided by sacrosanct legal technicalities in punishing Axis master war criminals of their own accord. Fearing that the Governments of Great Britain and the United States will be entirely too lenient with Axis war criminals, they have not participated in the United Nations War Crimes Commission sitting in London. Their fears have evidently been somewhat justified by current events. To illustrate: Sir Cecil Hurst, Vice President of the Perma-

²² Professor Eyvgeni Tarle, in *Obshchee Sobranie Academii Nauuk S.S.S.R.* (General Assembly of the Academy of Science), September 25-30, 1943, Moscow, 1944, pp. 183-192.

nent Court of International Justice, resigned as Chairman of the United Nations War Crimes Commission on January 4, 1945. Obviously there was something more than coincidence in the parallel dismissal of Herbert C. Pell, American member of the Commission. Although the circumstances surrounding these two resignations have not yet been made public, it is reasonably correct to assume that politics have again taken precedence over abstract justice. Evidently the British and United States Governments failed to reach an agreement upon a comprehensive judicial procedure affecting the treatment of war criminals.

One of Soviet Russia's eminent contemporary jurists has compiled historic precedents of German atrocities covering the period from the Franco-Prussian war of 1870 to the first World War. He elucidates the conception of international crime itself, convincingly criticizing the definitions hitherto suggested in foreign literature (by Pell, Selden, and others), and defines international crime as "infringements of the principles of international intercourse." Analyzing existing international agreements, such as the Hague Convention of 1907 and the Geneva Convention of 1929, the author shows that it is now not only juridically possible, but even obligatory, to make those who violate the laws and customs of war answerable before the law.

Professor Trainin argues that a state should bear political responsibility for international crime whereas criminal responsibility must lie with the natural persons guilty of the crimes committed. While recognizing the unquestioned moral and material responsibility of the German people for the wrongdoings of the Hitlerite gang, the author believes at the same time that this responsibility cannot be determined by the usual methods of criminal law. "It is necessary to determine realistically and concretely what groups and persons should be deemed the inspirers, organizers, accomplices, or perpetrators of the Hitlerite crimes and who should bear, in this connection, criminal responsibility." ³³ Hitler and his clique are the organizers and instigators of the crimes in general and at the same time perpetrators of international crimes such as aggression and violation of treaties. In addition to Hitler and his ministers, this group of criminals includes also the leaders of the Nazi party, the German military command, and the local representatives of the Hitlerite Government.

As spokesmen of the Soviet Extraordinary State Committee on War Crimes, Professors Trainin and Korovin contend that the United Nations War Crimes Commission sitting in London is bogged down on the distant approaches to the questions of tribunal and punishment. So far the Commission has produced seven lists of war criminals and the natural question

³³ Professor Alexander N. Trainin, "Ugolovnaya Otvetstvennost Gitlerovtzev" (Criminal Responsibility of the Hitlerites), 1944 (Institute of Law, Academy of Sciences of the U.S.S.R., published under the editorship of Academician A. Y. Vyshinsky; at present, Andrei Y. Vyshinsky is Vice Commissar for Foreign Affairs); see comprehensive review of this work by the present writer in American Bar Association Journal for July, 1945.

to the Allies is: How much time will be required to transfer the criminals from the lists to the trial court? "Justice is slow in coming; justice is moving with brakes on."

The Soviets also argue that the fascist higher-ups, the ruling Hitlerite clique, had also their special "social base"... they were supported by the powerful German financial and industrial concerns. The Hitlerite Government by a series of measures coöperated in the concentration of enterprises and capital and in raising up in the country numerous industrial and financial "fuehrers." For example, by the law of May 15, 1933, separate enterprises were forced to join cartels. In accordance with the law of April 30, 1937, joint-stock companies with a capital up to 100,000 marks were subject to liquidation and thenceforth only companies with a capital of not less than 500,000 marks were permitted.

On the basis of the data of 1935, there were in Germany 7,840 companies with a capital of 19.6 billion marks, and of this capital 4 billion marks were controlled by 15 of the largest concerns (the Farben Industrie, Krupp and others), and 6.7 billion marks by 56 other concerns. During the last few years the concentration of monopolistic organizations in Germany has certainly been carried out on a still greater scale. Powerful financial and industrial magnates have appeared. Their political positions were clear: they were the owners for whom the Fascist Government machine worked zealously. What was their role from the point of view of criminal law? 34

As far as the jurisdiction of all of the Hitlerite crimes is concerned, Soviet exponents of international law postulate their arguments on the basis of the declaration signed by President Roosevelt, Marshal Stalin, and Prime Minister Churchill on November 2, 1943, specifying "territorial" jurisdiction for the crimes perpetrated by the Germans on the occupied territories, such cases to be tried at the place they were committed, and "real" jurisdiction for the crimes perpetrated on German territory or on the high seas, such cases to be tried by the courts of the states whose citizens suffered from the crimes. Concerning Hitler and his closest associates it was held that "Their crimes are so enormous and indisputable that they do not require any specific investigation or legal procedure." In view of this joint declaration, the fate of Hitler and his clique was to be decided by a political verdict of the governments of the victor democratic powers.

Another contemporary Soviet jurist advances the argument that the honor of the initiative of propounding the problem of the criminal responsibility of international criminals belongs to Russian juridical thought. As far back as the nineteenth century Professor F. F. Martens, a well-known Russian authority on international law, advocated the necessity of the establishment of individual sanctions for the transgression of the laws and customs of war. He then argued that a person guilty of violation of the customs of war, taken prisoner by the enemy, must not be regarded as a Trainin, as cited, pp. 85-86.

prisoner of war but should be subject to court martial as a criminal. Thus the principle of continuity is beginning to receive serious recognition.

Professor Korovin contends that Soviet jurisprudence continues to work on this problem which is of utmost importance for the return to normal international relations. For the first time in the history of mankind, he suggests, a theoretical idea is becoming a stern and imminent reality. The organized struggle against international crimes and the prompt and effective punishment of international criminals are now to become an essential element of the international organization of a stable peace and security.³⁵

In further elucidation of this thought, Professor Trainin argues also that military discipline is the foundation of any army, "but it is not always a question of military discipline alone. To order women and children to be burnt or innocent people to be poisoned in gas-wagons has really nothing to do with military orders, but is instigation to commit a crime for which both the instigators and the perpetrators should be held fully responsible." Such was also the view of the German Supreme Court in Ditmar's case in 1921 and a similar standpoint was adopted by the German Military-Criminal Code of October 15, 1940, Article 4 of which says that subordinates carrying out illegal orders are liable "if they know that their superior's orders were an ordinary or military crime or misdemeanour." Accordingly a fascist bandit dressed in a military uniform can in no way justify himself by pretending that while committing his crimes he acted on orders given to him by another bandit of higher rank.

Moreover, both jurists—Professors Trainin and Korovin—contend that this is a libel on jurisprudence. Since when and under what laws is a bandit who dons the uniform of a police official immune from criminal prosecution? All this so-called jurisprudence is a poorly concealed attempt to protect the war criminals from the law, from justice and from punishment. They are equally derisive in their criticism of existing laws affecting extradition of criminals. These obsolete laws of extradition might offer refuge to thousands of Hitlerite criminals.

German Monopolies and International Cartels

One of the most important problems for future peace is the creation of political and economic conditions guaranteeing against any possible renewal of German aggression. The oft-repeated Soviet view is that this can be achieved by way of reconstructing the economic system of Germany which will make it impossible for the military and economic structure of German imperialism, established by German monopolies with the help of international cartels, to be revived in the post-war period.

^{**} Professor Eyvgeni Korovin, "K Voprosu Ob Ugolovnoi Otvetstvennosti Gitlerovtzev" (Concerning the Question of Criminal Responsibility of the Hitlerites) in *Voina I Rabochii Klass*, No. 17 (September 1, 1944).

^{*} Professor A. N. Trainin, "Strategiya Miloserdiya" (The Strategy of Clemency) in Voina I Rabochii Klass, No. 19 (October 1, 1944).

Soviet writers, radio commentators, and political observers argue revealingly that during the first World War voices were heard in the camp of the then anti-German coalition warning against the danger of "coalition pacification" of Germany after the war. They also recall that the inter-parliamentary conference of the countries of the Entente which was held in April, 1916, for the purpose of discussing post-war economic problems expressed its unanimous desire for the establishment of an "economic entente." "These plans, which aimed at the economic disarmament of Germany, were opposed by other projects belonging to some business circles in England, which were closely connected with the German monopolies. They were in favor of unlimited freedom of trade with Germany." 17

To substantiate this view Soviet spokesmen cite many statements made by leading American businessmen and political leaders, including the thesis recently expounded by former President Herbert Hoover and corresponding leading spokesmen in Great Britain, to the effect that these "voices are in favor, openly or disguised," of the preservation of German monopolies and ipso facto are in favor of preserving the military and economic structure of Germany. Moreover, authoritative Soviet political economists have repeatedly made their position clear; namely, that the champions of international monopolies and cartels cannot imagine an economic and political equilibrium in Europe without the existence of German monopolies and In accordance with their plans the reestablishment of free trade after the war must first of all mean freedom for the making of new cartel agreements with German monopolists. In this respect the British White Paper on Employment Policy regarding the post-war organization of English industry published in the beginning of January 1944 is characteristic of the British trend of thought. This plan recommends a speedy abolition of government control over industry, complete return to the principles of free trade, and reëstablishment of all pre-war connections of British industry; hence also the connections with German cartels.

Therefore the Soviets make bold to state that if the United Nations do not reach an agreement regarding the question of the liquidation of German monopolies, Germany will once more become the chief center for international cartels as she was prior to this war.

Soviet spokesmen were equally apprehensive about the prospect of World War III and the reluctance on the part of powerful circles in the United States and in Great Britain to eradicate German economic imperialism via the cartel system root and branch. In their weekly summaries on international themes beamed to North America and to their domestic audiences Soviet radio commentators continually remind their listeners that the

³⁷ Konstantin Hofman, "O Nekotorikh Planakh Spaseniya Germanskikh Monopoli" (Concerning Some Plans for the Salvation of German Monopolies), in *Krasnaya Zvezda*, October 11, 1944. *Krasnaya Zvezda* (Red Star) is the official organ of the State Commissariat of Defense; it is not circulated generally, but is destined for Red Army officers and men.

Farben-Industrie chemical trust, Krupp Iron Works, and other German monopolies, in addition to their numerous branch enterprises abroad, have been establishing new ones in various so-called neutral countries, i.e., Argentina, Spain, Portugal, Switzerland, and Sweden. Their owners are citizens of this or that neutral country but their real masters are in Berlin, Cologne, and Frankfort. German monopolists are paying particular attention to the preservation and development of their operating bases in Latin American countries. To further substantiate this view the Soviets contend that in addition to the variegated economic penetration Germany meddled in political and in other domestic affairs of Latin American countries through its commercial channels. Thus in the field of international trade prior to the war between Germany and the United States the Germans occupied a prominent place in the sale of industrial equipment, agricultural implements, electrical equipment, and metal manufactures. Important coffee plantations in Brazil, Mexico, Venezuela, Ecuador, and Colombia, cotton and sugar plantations in Peru, large steel foundries in Chile, oil wells in Argentina, Colombia, and Mexico belonged to and were controlled by Germans. same way, Germans were and still are the owners of copper mines in Brazil and of breweries and hotels in many Latin American countries, while they played an important role in the medical supply trade of Peru.38

Thus the Soviet thesis is the indubitable fact that the United Nations' victory will not be complete after the military defeat of Hitlerite Germany unless and until Germany's economic disarmament is carried out expeditiously and effective measures are taken against German monopolies and cartels.*

The Soviet Union's Withdrawal from the Chicago Civil Aviation Conference

The sudden Soviet withdrawal from participation in the International Civil Aviation Conference which opened in Chicago on November 1, 1944, boded ill to the efforts in behalf of international collaboration for an enduring peace. The Soviet Home Service issued a brief broadcast on October 29 stating that the "Soviets will not attend the Chicago Aviation Conference because Portugal, Spain, and Switzerland have been invited to attend this conference." ²⁹

Shortly thereafter, on the same day, the official Soviet news agency issued the following supplementary statement: "TASS is authorized to state that in view of the fact that countries like Switzerland, Portugal, and Spain have also been invited to the Chicago conference, countries that for many years

³⁸ F. Glebovskii, "Gitlerovskaya Agentoora V Latinskoi Amerika" (Hitlerite Agents in Latin America), in *Voina I Rabochii Klass*, No. 16 (August 15, 1944).

^{*} See present writer's "Legal and Economic Factors Affecting Soviet Russia's Foreign Policy," in American Political Science Review, Vol. 38 (1944), at pp. 656, 876.

²⁹ Eastern European Weekly Survey (Federal Communications Commission), No. 21 (November 8, 1944).

have conducted a pro-Fascist policy hostile to the Soviet Union, the representatives of the Soviet Union will not take part in this conference."

It is to be noted that the six Soviet delegates, including high officers of the Soviet Air Force, were en route to the conference and reached Winnipeg on October 27, but were at once recalled to Moscow. Moreover, a list of the Governments and Authorities to whom invitations to attend this conference had been issued was published in the Department of State Bulletin for September 17, 1944, and included also the three countries to whose presence Soviet Russia objected; namely, Portugal, Spain, and Switzerland.

For a week no corroborative information emanating from Soviet Russia was received that might elucidate the circumstances surrounding Russia's sudden withdrawal from participation in the International Civil Aviation Conference. However, in its issue of November 5, 1944, *Pravda* justified the Soviet Government's withdrawal by pointing out the analogous situation in the case of Finland, which "always appeared in the role of 'an old democratic country', but this did not prevent her from becoming one of Hitler's most eager satellites. Likewise, a democratic reputation did not prevent Switzerland from conducting a pro-Fascist and hostile policy against the Soviet Union for many years."

The first definitive explanation of Soviet Russia's sudden withdrawal from the Civil Aviation Conference in Chicago was made in the form of an editorial which was also broadcast by the Soviet European Service in English on November 11. The statement follows:

On October 13 the Soviet Telegraph Agency TASS published a statement to the effect that the Soviet Union would not attend the international conference on problems of civil aviation which was meeting in Chicago November 1. In view of the fact that invitations had also been sent to Switzerland, Portugal, and Spain, that is, to countries with which the Soviet Union does not have diplomatic relations, and which for many years have been pursuing a pro-Fascist policy opposed to the Soviet Union. One can readily see that this statement is a clear and unambiguous explanation of the weighty grounds which prompted the Soviet Union to refuse to participate in the conference.⁴⁰

This editorial commented also on other editorials which had appeared in *The New York Times* and *The Washington Post* apropos Soviet Russia's sudden withdrawal from the conference. The editorial further stated that their assertions were

plainly at loggerheads with the truth. When the Soviet Union was notified of the conference in Chicago, all that was known was that neutral countries would participate—but the exact neutral countries were not named.

It goes without saying that there could be no objection to participation in the conference of such neutral countries as Sweden or Turkey. Not until October 24, or practically at the last moment, was it known that Spain, Portugal, and Switzerland—in other words, countries

40 Voina I Rabochii Klass, No. 21 (November 1, 1944).

which still do not have diplomatic relations with the Soviet Union—obviously reflecting their pro-Fascist policy—had also been invited to the conference.

It turned out that some neutral countries invited to the conference were such as had been maintaining diplomatic relations all along with Hitlerite Germany right up to the present—which had been on unfailingly good terms with Germany's satellites and which had not seen fit to establish normal relations with the USSR. No wonder then the Soviet Government is loathe to have anything to do with the governments of countries who have all along been pursuing a pro-Fascist policy hostile to the Soviet Union. Well, then, there is cause for rejoicing. The Chicago Conference may have lost the participation of the Soviet Union; but then it gained the addition of three such important countries as these.

Far-sighted observers, however, take a different view. In a broad-cast on October 30, a United States radio commentator came to the conclusion that it would be much more important for Russia to be present at the conference than Spain, Portugal, and Switzerland. Perhaps this conclusion will receive wider support after the Chicago

Conference if not at the conference itself.

The Soviets further contend that political questions are uppermost in the development of international air transport after the war. It is obvious that questions connected with the post-war air policy of the leading countries are an integral part of all questions relating to post-war world organization. In fact, months preceding the opening of the Civil Aviation Conference in Chicago, authoritative Soviet writers had stated their point of view in Russia's leading political-economic journals.⁴¹ Post-war development of international air transport will depend on the international political situation. The remarkable progress of the aircraft industry during the war as well as the technical achievements in aircraft construction and performance have opened up great possibilities for the post-war development of all types of civil aviation. The Soviets further contend that the British Government regards air transport as its "chosen instrument," apparently intending to put aviation in a privileged position similar to that heretofore enjoyed by the British merchant marine.

During the war the United States has gained much experience in the construction of transport planes and has strengthened its position in the sphere of air communications, the more so since it has encountered no serious competition from other countries. Both British and American air circles anticipate a serious rivalry in post-war air transport and international air routes. Likewise the question of the creation of an international air center and that of the rights of the smaller countries in such a center are arousing much interest. The Americans are in favor of an international organization with limited rights—whereas the British want a world organization, controlling the distribution of air routes.

⁴¹ Colonel M. Tolchenov, "Poslevoyenneye Probleme Grazhdanskoi Aviatzi" (Post-War Problems of Civil Aviation) in *Voina I Rabochii Klass*, No. 11 (November 1, 1943).

As in the case of international monetary arrangements Soviet observers have been following trends and public discussion bearing on international air transport problems after the war both in the United States and Great Britain.

Accordingly, they have summarized for Soviet students and government officials American and British analyses bearing on "freedom of the air," and "spheres of influence" in the light of the respective business interests in each country. Since the Soviet Government exercises a complete monopoly on foreign trade, including aviation and air transport, they are not so vitally interested in these subjects. Therefore, the Soviets are merely active observers of the "schemes that are being developed for the internationalization of all air routes, or, at least the airports and bases. On the other hand, some believe that each country should be allowed to organize its own inland air routes as well as controlling of air cargoes passing over it. Much attention is being devoted to post-war rivalry in the field of air transport." 42 Soviet writers are aware of the trends that governments of all countries will give much support to civil aviation; that powerful air concerns which have made their appearance in the course of the last few years are exercising a tremendous influence on the machinery of the state; and that a large army of various air experts will be available after the war. And, consistent with their previously expounded arguments, the Soviets contend that of great influence on the development of aviation will be the foreign political and strategic interests of the leading countries.48

Undoubtedly there were other significant factors that prompted Soviet Russia's dramatic withdrawal from the Chicago Civil Aviation Conference. Similarly, the All-Union Chamber of Commerce in Moscow did not send delegates to the International Business Conference held in Rye, New York, November 10–18, 1944. Since the Soviet Government exercises a complete monopoly of foreign trade, has no investments in foreign countries; and since there is practically no private enterprise within the USSR, the Soviet Government did not deem it propitious to send a delegation. Unlike the Civil Aviation Conference, Mikhail M. Gousev of the Amtorg Trading Corporation of New York was accredited as an observer at the Rye International Business Conference.⁴⁴

The Atlantic Charter as a Legal Instrument

As promulgated by President Roosevelt and Prime Minister Churchill on

- ⁴² V. Cheprakov, "Mezhdunarodnei Vozdushnei Transport Posle Voiny" (International Air Transport After the War) in *Mirovoye Khozaiswo I Mirovoya Politika*, No. 6 (June, 1944), pp. 49-60.
- ⁴ Editorial Note, "O Konferentzii V Chicago I O Sovietskom Soyuze" (Concerning the Conference in Chicago and the Soviet Union), in *Voina I Rabochii Klass*, No. 20, November 1, 1944.
- "In addition to Mr. Gousev, Amtorg was also represented by four advisers: I. V. Agapov, B. Gourin, D. Mailov and Bella Solasko.

August 14, 1941, the eight points of the Atlantic Charter were intended to become the common principles of the United Nations on which they had hoped to base a better future for the world. This document was a joint declaration broadcast to the world by the two Heads of State and was subsequently solemnly subscribed to in a formal United Nations Declaration signed by 26 nations in Washington on January 1, 1942. Since then, 11 more nations have affixed their signatures to this document. The Atlantic Charter was further explicitly accepted as a basis of the peace settlements in the Anglo-Russian Treaty of Mutual Assistance signed in London, May 26, 1942. The Charter was also reaffirmed in the Joint Four Nation Declaration issued by the United States, Great Britain, Soviet Russia, and China in Moscow on November 1, 1943. Thus these formal diplomatic instruments have unquestionably given the Charter the status of recognized international law and of a bona fide legal instrument.

Yet Soviet spokesmen assert that the Atlantic Charter and the Moscow Declaration of Foreign Ministers of October 30, 1943, are not sufficiently precise instruments for settling the complicated problems of war and peace. To be sure, their apprehensions were expressed months preceding the Crimea Conference. One of Soviet Russia's leading observers questioned whether it was wise to adhere in all cases to the principle of unconditional surrender first proclaimed by President Roosevelt and Prime Minister Churchill at their Conference in Casablanca in January, 1943, and which was later incorporated in the Moscow Declaration.

To substantiate this view Professor Shtein cites the fact that the Soviet Union thought it best not to ask for unconditional surrender in its negotiations with Finland. The willingness to forego a demand for unconditional surrender on other Hitlerite satellite states might tend to unite the anti-Fascist and democratic forces in those countries so that they could take their land out of the war on Adolf Hitler's side and join the active struggle on the side of the United Nations.

Current events have demonstrated that this view was not an expression of an individual writer. On the contrary: It has been translated into action on four successive occasions, i.e., the armistices concluded by the Soviet Union in behalf of the United Nations with Rumania on September 12, 1944, with Finland on September 19, 1944, with Bulgaria on October 28, 1944, and with Hungary on January 20, 1945. This writer makes bold to suggest that the leaders of the movement in England who claim the Atlantic Charter bans any territorial changes affecting the German state

are the same people who a while back were for the policy of former Prime Minister Neville Chamberlain and were grouped around the renowned Cliveden clique. They are the ones who shout now that a dismemberment of German territory in favor of any other governments cannot morally be approved. It is permissible to remind ourselves

⁴⁶ War Documents (Department of State Publication 2162), 1944.

that the moral doubts of these persons were never aroused at a time when Chamberlain assisted in the dismemberment of Czechoslovakia in favor of Germany at the Munich Conference. These same people assisted the conquerors' pretensions of the so-called Polish Government toward territories in the Ukraine and White Russia.⁴⁶

Since these statements were written many events of epoch-making significance have occurred that might cause Soviet spokesmen to modify somewhat their attitude toward the Atlantic Charter. In fact, Marshal Stalin affixed his signature in behalf of the USSR to the Crimea Conference Declaration which, in turn, gave the Atlantic Charter uncontestable legal status in these terms:

By this declaration we reaffirm our faith in the principles of the Atlantic Charter, our pledge in the Declaration by the United Nations and our determination to build, in coöperation with other peace-loving nations, world order under law, dedicated to peace, security, freedom and the general well-being of all mankind.⁴⁷

This trend of thought has also been voiced by Marshal Stalin on several recent occasions.⁴⁸ It is hoped, therefore, that an effective *modus vivendi* will be formulated at San Francisco with a view to galvanizing into action the principles enunciated in the Atlantic Charter.

The Soviet Union's Paramount Interest in the Far East

The U.S.S.R. offered a non-aggression pact to Japan first in December, 1931, after the outbreak of war in Manchuria. From the very beginning the Soviets had let it be known where their sympathies lay in regard to Chinese independence and the outcome of the war in the Far East.

The Neutrality Pact between the U.S.S.R. and Japan, signed in Moscow on April 13, 1941, by Yosuke Matsuoka and Yoshitsugu Tatekawa, and Vyacheslov Molotov, provided in Article II that: "Should one of the contracting parties become the object of hostilities on the part of one or several third powers the other contracting party will observe neutrality throughout the duration of the conflict."

The Pact said nothing about a policy of friendship in case of war or even of refraining from aiding the enemy of the other party. In fact, the official

46 Professor Boris Shtein, "O-b Atlanticheskoi Khartii" (Concerning the Atlantic Charter) in Voina I Rabochii Klass, No. 9 (May 1, 1944).

⁴⁷ The Crimea Conference in *Department of State Bulletin*, Vol. XII, No. 295 (February 18, 1945), p. 215

⁴⁸ Josef V. Stalin, "O Velikoi Otchechestvennoi Voiny Sovetskogo Soyuza" (Concerning the Great Patriotic War of the Soviet Union), 1944; and "27th Anniversary of the October Socialist Revolution: Report of the Chairman of the State Committee of Defense," given in Russian in *Pravda*, No. 268 (November 7, 1944).

As of January 1945, the following were members of the powerful policy-making State Defense Committee: Josef V. Stalin, Vyacheslav M. Molotov, Lavrenti P. Beria, Gen. Nikolai Bulganin, Lazar M. Kaganovitch, Georgi N. Malenkov, Anastas I. Mikoyan, and Nikolai A. Voznessensky.

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comment was that "the conclusion of the treaty with Japan has not yet settled all the various problems of Soviet-Japanese relations but it opens the road to their settlement." 49

Moreover, throughout the war with Germany, the Soviet Union remained neutral with respect to Japan. The Soviets were thus able to devote their maximum energy to the Western Front while immobilizing large bodies of Japanese troops in Manchuria and in Korea. Now that Germany has been defeated the Soviets have already begun to make preparations for political and military offensives against the Japanese. For the Soviets can ill afford to be left out of the peace conference which will plan the future of the Orient.

However, Soviet neutrality in the Far East has been of a different character from the generally accepted concept of neutrality. It was a neutrality in the narrow sense of the word. Moreover, several months after the Neutrality Pact was concluded the Japanese Government protested to the Soviet Government against the shipment of American goods through Vladivostok. In turn, the Soviet Government protested against this "unfriendly act" on the part of the Japanese Government. As a consequence of this diplomatic exchange between these two neutral powers the United States Maritime Commission decided in principle, on October 22, 1941, to discontinue the shipment of materials to the U.S.S.R. by way of the Pacific. Also, early in the fall of 1941 all water routes in the Vladivostok region were mined by the Soviets.

Russo-Japanese relations have become all the more strained as a result of serious incidents which occurred on the Manchurian border, especially since December 7, 1941, when Japan attacked Pearl Harbor. Shortly thereafter, on February 26, 1942, the Soviet Government sequestered all Japanese holdings in Soviet territory and placed them under control of a Commissar for Alien Property. The growing unfriendly relations between Soviet Russia and Japan were conspicuously reflected in the Soviet press and radio. Thus on the occasion of the first anniversary of the Russo-Japanese neutrality agreement editorials in the Soviet press pointed out that political expediences and military exigencies justified this treaty; but they were equally outspoken in stating:

It is important that the Japanese military-fascist cliques, who are drunk with their military successes, should realize that all their prattle about a war of aggression in the North will harm Japan above all.⁵⁰

The districts in the eastern part of the U.S.S.R., primarily the Far East and also the districts located in the country's interior, are in a class by themselves. They were singled out for special attention in the Third Five-Year Plan. Soviet spokesmen, press, and radio have continually reiterated the

40 Isvestiya, April 15, 1941.

80 Pravda, April 13, 1942.

strategic significance of the Far East which made it particularly obvious that unless they achieve a comprehensive development of the principal economic centers of the country, they cannot safeguard their vital interests as a state. Accordingly, the Soviet Government has undertaken, and in a large measure carried out, a gigantic program of economic development in Siberia. They left no stones unturned in order that the Far East might produce locally all its requirements in fuel and, as far as possible, metal, machinery, cement, lumber, building materials, foodstuffs, and completely meet its own requirements in potatoes and other vegetables. All of the economic and industrial developments of this area are in consonance with the principle promulgated by the People's Commissar for Foreign Affairs, Vyacheslav M. Molotov, who stated on March 14, 1939, that "We regard the Far Eastern Territory as a mighty outpost of Soviet power in the East which must be strengthened in every way." ⁵¹

In addition the fisheries of Kamchatka, the Sea of Okhotsk, and the Gulf of Tartary play an important part in the food supply not only of the Far Eastern Region but of the Soviet Union as a whole.

Of equal significance is the Soviet Union's abiding interest in other areas in the Far East. Since 1924 Outer Mongolia has been, to all intents and purposes, a dependency of the U.S.S.R. This phenomenon is evidenced by the Treaty of Mutual Assistance between the U.S.S.R. and the Mongolian People's Republic of March 12, 1936. Similarly, Sinkiang (Chinese Turkestan) has been under Soviet influence during the period 1920–1942. Following the German onslaught on the U.S.S.R. in June, 1941, the Sinkiang area fell under the "sphere of influence" of the Chinese Government in Chungking. Since the middle of 1944, when the German armies were driven from Russian soil, the Soviet Government has again begun to exert its powerful influence in Sinkiang. Consequently difficulties or skirmishes between or on the Sinkiang-Outer Mongolia frontier are likewise a source of trouble between China and the Soviet Union.

Soviet spokesmen and publicists have made it abundantly clear that their abiding and far-reaching interest in the Far East will be implemented by a dynamic unilateral course of action different from that pursued in Europe. The present civil war in Sinkiang, precipitated by the competently led Tartars and Kazakhs, is but one manifestation of Soviet far-flung activities in the Far East: Outer Mongolia, Sinkiang, Northern China (Yenan), Manchuria, Korea, and Tibet. Soviet expansionism in the Far East has always been a basic continuance core of U.S.S.R. foreign policy. Clearly, after the defeat of Japan, costs entailed in further prosecution of Soviet expansionism in the Far East will be greatly reduced and the gains to be derived therefrom

No The Land of Socialism Today and Tomorrow (Reports and Speeches at the Eighteenth Congress of the Communist Party of the Soviet Union, March 10-21, 1939), Moscow, 1939, p. 135.

infinitely increased, whereas the costs entailed in the Sovietization of Southeastern Europe are enormous in proportion to the expected gains to be derived therefrom. Moreover, the Stalin regime is better equipped for a far-reaching expansionism in the Far East than in Europe politically, economically, psychologically, and geographically.

It should be noted that the Soviet Government did not participate in the Cairo Conference of December 1, 1943. Hence the Stalin regime is not a signatory to the Cairo statement wherein the Governments of China, United States, and Great Britain declared: "Mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent." ⁵²

The traditional feud between Marshal Josef V. Stalin and Generalissimo Chiang Kai-shek has had deleterious effects on the prosecution of the war against Japan. This feud is a reflection of the deeply-embedded divergent national interests which had been, and in all probability will continue to be, a deterrent factor in the projected unification of China. Should this "breach" continue unabated it will cause the United States grave embarrassment. American military strategy in the Far East might have to undergo a radical shift and change commensurate with Soviet interests and its course of action in the Far East. Obviously the American-Chinese-Soviet problem will become progressively more complex as time marches on.

Conclusions: Can the United Nations Survive Victory and Effect a Durable Alliance?

What are the safeguards against disunity among the Great Powers themselves? In answering these protentous questions the quintessence of Soviet current thinking appears to be motivated by the belief that the area of disagreement between the two major capitalist countries—Great Britain and the United States—is wider than that between the Soviet Union and the United States. Curiously enough, divergencies between Great Britain and the United States were conspicuously brought into the open at the Hot Springs Food Conference, Bretton Woods, Dumbarton Oaks, and at the Chicago Aviation Conference and the Rye Business Conference. In the light of these and other extenuating circumstances authoritative Soviet

War Documents (Department of State Publication 2162), Washington, 1944, p. 26.

¹³ Kh. Eidus, "Ostavka Todzho I Polozheniye V Yaponii" (Tojo's Resignation and the Situation in Japan), in *Mirovoye Khozaistvo i Mirovoya Politika*, No. 9 (September, 1944); V. Maslennikov, "Na Vosmom Godu Osvoboditelnoi Voiny" (The Eighth Year of the War of Liberation in China), in *Mirovoye Khozaistvo i Mirovoya Politika*, No. 10-11 (October-November, 1944); B. Grigeriev, "Kitai Na Vosmom Godu Voiny" (China in the Eighth Year of War), in *Bolshevik*, No. 17-18 (September 1944); I. A. Alexandrov, "K Polozheniyu V Kitaye" (About the Situation in China), in *Voina i Rabochii Klass*, No. 14 (July 15, 1944); V. Avarin, *Kitai Na Nyneshnem Etape Voiny* (China in the Present Phase of the War, in *Voina i Rabochii Klass*, No. 23, December 1, 1944).

spokesmen are in unison in promulgating their thesis; namely, that the Atlantic Charter, the Moscow and Teheran Declarations, the Dumbarton Oaks and Bretton Woods Proposals, and the Crimea Declaration are significant milestones in the concerted efforts in behalf of international security and lasting peace. However, these instrumentalities in and of themselves will not prevent resurgence of a disguised Fascism nor peremptory use of force; they must be implemented by effective machinery to translate these "agreements" into action.

For no peace treaty can insure lasting peace in Europe unless effective measures are taken for the economic, military and political disarmament of Germany. Nor is this all. Economic disarmament cannot be effective unless it is applied to the German economy as a whole; hence all German industry must be either liquidated or controlled. It is the Soviet Government's current fiscal policy to remain a planned economy country. Therefore, Russia intends to preserve her all-embracing government monopoly of foreign trade. Of necessity parallel Soviet foreign economic policies will probably be practiced in bordering countries liberated by the Red Army. Consequently political rather than commercial problems will be given preferential consideration during the period of economic reconstruction and industrial development.

Barring unforeseen events, the present Soviet Government will not be prone to sacrifice basic Soviet principles and policies in its eagerness to reconstruct the devastated areas within the shortest possible time. The problems of post-war reconstruction and of the measures being taken by the Soviet Government to meet them will continue at an accelerated rate but the present Soviet leaders appear not to be disposed to deviate from their basic objectives:

a. To establish the U.S.S.R. as the greatest planetary economic and political power supported by the most effective land armies; hence their glorification of Nov. 19th as Artillery Day.

b. To effect a collectivized system of society and reduce the area for free enterprise and free competition to their minimum, commensurate with prevailing social and economic conditions in each country affected.

c. To continue its rigid governmental control of foreign trade of all the 16 Soviet Union Republics and eventually of the countries that have recently been liberated by the Red Army, especially within their newly established security zones.

d. To reconstruct the heavy industry in the Ukraine and to expand the vast establishments of heavy industry in Soviet Central Asia and in the Soviet Far East; each area to be economically and militarily self-sufficient.

e. The building of a large Red Fleet has been, and continues to be, one of the Soviet Government's preferential projects. Russia's urge to the sea has always been blocked by the British Navy and diplomacy. Soviet foreign policy has always been directed

toward obtaining outlets to the Mediterranean Sea and the Indian Ocean as well as control of the outlet from the Baltic Sea into the Atlantic Ocean.

f. To eradicate illiteracy and to increase the standard of living of the Soviet people will remain basic cores in the shaping of Soviet

domestic and foreign policy.

g. To receive recognition and deference not only as a great political power but also as a great creator of economic wealth, being self-sufficient in practically all strategic raw materials within its own frontiers.

h. To establish national "security zones" in Europe and the Far East on land and sea frontiers; to strengthen Sovietism within the boundaries of the U.S.S.R. and expand the same into each security zone area, as commensurate with prevailing political, psychological, social, and economic conditions.

Moreover, contemporary Soviet spokesmen have made it abundantly clear that they must take destiny into their own hands, particularly in view of their skepticism concerning the British Foreign Office. They are willing to participate in an international organization of security consistent with and in the interest of the Soviet Union's basic policies and provided the Governments of the United States and Great Britain assent to the Kremlin's proffered course of action in establishing security zones in Southeastern Europe and in the Middle East, especially in Iran and via the Straits. The government crisis in Iran, precipitated by the Soviets, of December, 1944, and the Kremlin's announcement on March 20, 1945, requesting revision of the Montreux Convention of July 20, 1936, clearly indicate positive trends of Soviet penetration into the Mediterranean area and the Near East.

In addition, the Stalin Regime is not yet convinced that the British Foreign Office and the American State Department are sincerely interested in establishing an effective collective security system.

This appears to be the primary reason that prompts the Soviet leaders to strengthen their national security by organizing a cordon cordial of small nations. The states within these security zones should be endowed with governments that will be definitely friendly to the Soviet Union and, what is more important, will be inclined to far-reaching economic and social reform that eventually will lead toward a collectivist system of society in Europe and in the Far East.

Eminent Soviet writers have also given credence to the suggestion that the best way to safety lies in collaboration, rather than in isolation. But bitter experience has taught the Soviets the lessons of history; major powers caused and made World Wars I and II; hence major powers can create conditions to prevent wars and enforce peace and vice versa. Moreover, political fac-

⁵⁴ "Soviet-Iranian Oil Controversy" in *Eastern European Weekly Survey* (Foreign Broadcast Intelligence Service), No. 21 (November 8, 1944), pp. 17-18.

⁵⁵ The Montreux Convention gave Turkey the right to fortify and control the Straits for twenty years. See text of this treaty in *League of Nations Treaty Series*, Vol. 173, p. 213.

tors are determining factors in contemporary world affairs. Therefore the really vital problem is how to dissipate deeply embedded cross-currents of suspicion and to develop between and among the major powers a disposition to consult and to agree, thus effectuating the purposes of the projected United Nations Charter.

²⁶ L. Gatovskii, "O Roli Politicheskikh Faktorov v Voiny" (Concerning the Roles of Political Factors in War), Moscow, Ogiz, 1944. For an earlier summary of Soviet views on collective security, see Charles Prince, "The U.S.S.R. and International Organizations," in this JOURNAL, Vol. 36 (1942), pp. 425–445.

THE DISPOSITION OF ENEMY DEPENDENT AREAS

By Annette Baker Fox

Institute of International Studies, Yale University

If a defeated Japan is to be "pared back to her volcanic core," China will be a prime beneficiary. The Cairo Declaration promised to return to her Formosa, the Pescadores, and Manchuria. But what of those parts of the Japanese colonial empire which were not Chinese? Some other arrangements must be made for Korea and the Japanese mandated islands. Liquidation of Italy's African empire raises similar questions.

What is the range of possibilities? At one extreme is immediate and complete independence, possible in the case of Korea. At the other extreme is outright annexation by one of the powers, as might be advisable in the case of the Japanese mandated islands and the African colonies. In between, the following alternatives are available for any of these possessions:

- 1. A mandatory state might govern the area subject to supervision by the equivalent of the Permanent Mandates Commission, as was done in Tanganyika, New Guinea, and formerly in Iraq.¹
- 2. Two or more states might jointly control the area either directly or through a multi-national commission, as was done in the New Hebrides and formerly in Albania.²
- 3. An agency of a general international organization might administer the area, as was the case in the Saar before the plebiscite.⁸
- ¹ For discussions of the mandate system see Quincy Wright, Mandates Under the League of Nations, Chicago: University of Chicago Press; 1930; Aaron M. Margalith, The International Mandates, Baltimore: The Johns Hopkins Press; 1930; Norman Bentwich, The Mandates System, London: Longmans; 1930; John A. Decker, Labor Problems in the Pacific Mandates, New York: Institute of Pacific Relations; 1940; Emanuel Moresco, Colonial Questions and Peace, Paris: International Institute of Intellectual Coöperation; 1939.
- ² For general discussions of joint control see L. Oppenheim, International Law, 2 vols., London: Longmans; 1937 (5th ed., by Lauterpacht); Norman L. Hill, International Administration, New York: McGraw-Hill; 1931; Raymond Leslie Buell, International Relations, New York: Holt; 1925; M. F. Lindley, The Acquisition and Government of Backward Territory in International Law, London: Longmans; 1926; Royal Institute of International Affairs, The Colonial Problem, London: Royal Institute of International Affairs; 1937. A more detailed discussion of some examples may be found in Francis B. Sayre, Experiments in International Administration, New York: Harper; 1919.
- ³ Some kind of international supervision over a native administration is often proposed for areas like Korea, and superficially this might appear to be a fourth alternative. However, if this supervision is not confined to moral persuasion but also includes the power to make and execute important decisions, it becomes either a type of joint control or international administration. This is equally true in the case of proposed regional commissions for backward areas.

The adequacy of any suggested solution may be judged by the following tests. (1) Will it avoid the creation of a power vacuum useful to some future aggressor and thereby jeopardize the security of the victors or promote a conflict among them? (2) Will it preserve the respect of the smaller states and of world opinion in general? The solution must not disregard the Atlantic Charter's promises regarding self-government, non-aggrandizement, and equal access to natural resources. (3) Will it protect and promote the interests of the native population?

Judged in relation to these goals, certain proposals for the disposition of ex-enemy possessions lack feasibility. Thus immediate and complete independence for Korea, as for other areas under consideration, would fail to meet the first test. Neither could the United States assume unqualified possession of the Japanese mandated islands without causing an uproar about violating the Atlantic Charter. Nor would Italy—even if she were permitted to retain her colonies—possess the economic power to meet the test regarding native welfare.

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Following the First World War the Allies adopted the mandate system to dispose of colonial territories in conditions like those under consideration. Thus they sought to avoid the evil reputation of victors who profit by the spoils of war while shunning the risks of joint control. The latter objective was more nearly achieved, since the desire for colonial dependencies was sufficiently strong to restrict the powers of the Permanent Mandates Commission to the mildest form of supervision. Even the legal obligations embodied in Article 22 of the League Covenant were met only approxi-Nevertheless it has been possible for a Class A Mandate to obtain its independence as promised. Furthermore, administration of many of the mandates was favorable to the native inhabitants, the Japanese mandated islands being a notorious exception. However, the failures with respect to particular mandates were so glaring and the achievements fell so short of the proponents' expectations, that disillusionment with the entire system Therefore other forms of international control are again now prevails. being considered as preferable alternatives to the mandate system.⁵

Some writers reject out of hand any form of joint control with the simple assertion that such schemes have not been successful in the past. Those who approve of this alternative often overlook the implications of joint control. Ample historical evidence is nevertheless available to indicate

⁴ David Hunter Miller, The Drafting of the Covenant, New York: G. P. Putnam; 1928; Pitman B. Potter, "Origin of the System of Mandates Under the League of Nations," in American Political Science Review, Vol. XVI (1922), pp. 563-83; G. L. Beer, African Questions at the Paris Peace Conference, New York: Macmillan; 1923; Edward M. House and Charles Seymour, What Really Happened at Paris, New York: Scribner; 1921; Robert Lansing, The Peace Negotiations, Boston: Houghton Mifflin; 1921; Jan C. Smuts, "The League of Nations, A Practical Suggestion," reprinted in David Hunter Miller, work cited, Vol. II, pp. 23-60.

^{.5} A further evaluation of the mandate system will appear in the concluding section.

the defects inherent in joint control arrangements and the conditions under which this type of government is most likely to succeed. Judgments concerning the third alternative—administration by an agency of a general international organization—must remain tentative for lack of experience. It will be further considered, however, after a closer examination of joint governments as they have existed in the past.

The ensuing observations are based on a study of joint control as it was exercised in the historic cases of condominium in Schleswig-Holstein (Prussia and Austria, 1864–66), Samoa (Great Britain, the United States, and Germany, 1889–1900), he New Hebrides (Great Britain and France, 1906–), and the Anglo-Egyptian Sudan (1889–); in the joint protectorate of Tangier (Great Britain, France, Spain, Portugal, Belgium, the

⁶ A selected bibliography includes Lawrence D. Steefel, The Schleswig-Holstein Question, Cambridge: Harvard University Press; 1932; Edouard Simon, The Emperor William and His Reign, London: Remington and Co.; 1888; James Wyoliffe Headlam, Bismarck and the Foundation of the German Empire, New York: Putnam; 1899; Great Britain, Foreign Office, Schleswig-Holstein (Handbooks Prepared Under the Direction of the Historical Section of the Foreign Office, No. 35), London: H. M. Stationery Office; 1920; Sarah Wambaugh, A Monograph on Plebiscites, New York: Oxford University Press; 1920; and R. B. Mowat, A History of European Diplomacy, 1815–1914, London: Edward Arnold & Co.; 1922.

⁷Robert Louis Stevenson, A Foot Note to History, New York: Scribner; 1892; R. M. Watson, History of Samoa, Wellington, N. Z.: Whitcombe and Tombs; 1918; Felix M. Keesing, Modern Samoa, London: Allen and Unwin; 1934; Guy H. Scholefield, The Pacific, Its Past and Future, London: John Murray; 1919; Mary E. Townsend, The Rise and Fall of Germany's Colonial Empire, New York: Macmillan; 1930; the same, Origins of Modern German Colonialism, New York: Columbia University Press; 1921; George H. Ryden, The Foreign Policy of the United States in Relation to Samoa, New Haven: Yale University Press; 1933; Henry C. Ide, "Our Interest in Samoa," in The North American Review, Vol. CLXV (1897), pp. 155-73; and John George Leigh, "The Samoan Crisis and Its Causes," in The Fortnightly Review, No. 389 (1899), pp. 723-34.

⁶ Great Britain, Foreign Office, New Hebrides (Handbooks Prepared Under the Direction of the Historical Section of the Foreign Office, No. 147), London: H. M. Stationery Office; 1920; Philippe Grignon-Dumoulin, Le Condominium et la Mise en Valeur des Nouvelles Hebrides, Paris: Les Presses Universitaires de France, 1928; Tom Harrisson, Savage Civilisation, London: Gollancs; 1937; Great Britain, Colonial Office, New Hebrides, 1938, London: H. M. Stationery Office; 1940; Cambridge History of the British Empire, Vol. VII, Part II: New Zealand, New York: Macmillan; 1933; George Brown, "The Trouble in the New Hebrides," in The Contemporary Review, Vol. CV (1914), pp. 526–32; and John H. Harris, "The New Hebrides Experiment," in The Nineteenth Century, Vol. LXXV (1914), pp. 932–38.

The Earl of Cromer, Modern Egypt, New York: Macmillan; 1908; Vernon A. O'Rourke, The Juristic Status of Egypt and the Sudan, Baltimore: The Johns Hopkins Press; 1935; Great Britain, Foreign Office, Anglo-Egyptian Sudan (Handbooks Prepared Under the Direction of the Historical Section of the Foreign Office, No. 98), London: H. M. Stationery Office; 1920; Percy F. Martin, The Sudan in Evolution, London: Constable; 1921; Abbas Hilmi II, The Anglo-Egyptian Settlement, London: Allen and Unwin; 1930; Hans Kohn, A History of Nationalism in the East, New York: Harcourt, Brace; 1929; Royal Institute of International Affairs, Great Britain and Egypt, 1914-1936, London: Royal Institute of International Affairs; 1936; Yacoub Pasha Artin, England in the Sudan (London: Macmillan; 1911; Pierre Crabitès, "Egypt, the Sudan and the Nile," in Foreign Affairs, Vol. III (1924-25), pp. 320-30.

Netherlands, and Italy, 1923.); in Albania (1913–14), in the Saar (1919–34), and Leticia (1933–34), which were governed by international commissions; and in Memel (1919–23), where the final authority was supposed to be the Conference of Ambassadors. Because the Saar and Leticia

10 Graham H. Stuart, The International City of Tangier, Stanford University: Stanford University Press; 1931; Walter B. Harris, France, Spain and the Rif, London: Edward Arnold & Co.; 1927; M. Raphäel Durand, Le Problème de Tanger, Aix-en-Provence: J. Brun; 1926; F. H. Mellor, Morocco Awakes, London: Methuen; 1939; Charles E. Hobhouse, "The International Status of Tangier," in Contemporary Review, Vol. CXLVIII (1935), pp. 156-63; John R. Tunis, "Tangier: A Test in Internationalism," in Current History, Vol. XXXVII (1933), pp. 675-79; "Tangier, A Study in Internationalisation," in The Round Table, Vol. X (1919-20), pp. 348-60; W. H. Crawfurd-Price, "Where East Meets West," in Christian Science Monitor, Sept. 4, 1935; "Tangier: International Questionmark," in New Statesman and Nation, Vol. XXIII (1942), p. 271; Charles G. Fenwick, "The International Status of Tangier," this JOURNAL, Vol. XXIII (1929), pp. 140-43.

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¹¹ J. Swire, Albania, The Rise of a Kingdom, London: Williams & Norgate; 1929; Wadham Peacock, Albania, The Foundling State of Europe, New York: Appleton; 1914; Edith Pierpont Stickney, Southern Albania, 1912–1923, Stanford University: Stanford University Press; 1926; The Memoirs of Ismail Kemal Bey, Sommerville Story, ed., London: Constable; 1920; M. Edith Durham, Twenty Years of Balkan Tangle, London: Allen & Unwin; 1920; Ernst Christian Helmreich, The Diplomacy of the Balkan Wars, 1912–1913, Cambridge: Harvard University Press; 1938; Nationalism and War in the Near East (By a Diplomatist), Lord Courtney, ed., Oxford: Oxford University Press; 1915; E. J. Dillon, "Foreign Affairs," in Contemporary Review, Vol. CVI (1914), pp. 276–80; H. Charles Woods, "The Situation in Albania," in Fortnightly Review, Vol. CI (1914), pp. 460–72.

¹² B. T. Reynolds, The Saar and the Franco-German Problem, London: Edward Arnold and Co.; 1934; Sidney Osborne, The Saar Question, London: Allen and Unwin; 1923; Frank M. Russell, The International Government of the Saar, Berkeley: University of California Press; 1934; Margaret Lambert, The Saar, London: Faber and Faber; 1934; Michael T. Florinsky, The Saar Struggle, New York: Macmillan; 1934; Robert Donald, A Danger Spot in Europe, London: Leonard Parsons; 1925; Theodore Balk, The Saar at First Hand, London: John Lane at the Bodley Head; 1934; Sarah Wambaugh, The Saar Plebiscite, Cambridge: Harvard University Press; 1940; Charles H. Haskins and Robert H. Lord, Some Problems of the Peace Conference, Cambridge: Harvard University Press; 1920.

¹³ Manley O. Hudson, The Verdict of the League: Colombia and Peru at Leticia, Boston: World Peace Foundation; 1933; Alberto Ulloa, Posición Internacional del Peru, Lima: Imprenta Torres Aguirre; 1941; Colombia, Ministry of Foreign Relations, El Conflicto de Leticia, Bogota: Imprenta Nacional; 1934; Henry Grattan Doyle, "Peace Efforts in South America," in Current History, Vol. XXXVIII (1933), pp. 90-94; Lester H. Woolsey, "Leticia Dispute Between Colombia and Peru," this Journal, Vol. XXIX (1935), pp. 94-99; David Y. Thomas, "The Settlement of the Leticia Dispute," in The Southwestern Social Science Quarterly, Vol. XV (1934-1935), pp. 155-65; "The Seventieth Council and Three Disputes," in Geneva, Vol. VI (1933), pp. 23-25; "The League and Latin America's Quarrels," same, p. 46; "The League Council Faces Trouble in Three Continents," same, Vol. VII (1934), pp. 62-66; Y. M. Goblet, The Twilight of Treaties, London: G. Bell & Sons; 1936.

¹⁴ Thorsten Kalijarvi, The Memel Statute, London: Robert Hale; 1937; The Status of the Memel Territory, Doc. C.159.M.39, Geneva: League of Nations; 1924; Lithuanian Information Bureau, The Question of Memel, London: Eyre and Spottiswoode; 1924; Ian F. D. Morrow and L. M. Sieveking, The Peace Settlement in the German Polish Borderlands, London: Oxford University Press; 1936; Jacob Robinson, Kommentar der Konvention Über

governments were responsible to the League of Nations these cases have been called international administration, and they are important variations from the more common types of government by more than a single state. ¹⁵ In all these examples the sharing of authority is juridical. The division of political influence rarely conforms to the division of legal authority.

DEFECTS IN JOINT CONTROL

Administrative inefficiency can be readily demonstrated in any operating government, and this is especially easy in the case of areas under joint control. However, the experience with shared administration should be judged in the light of the purposes motivating adoption of such plans.

Joint control arrangements have characteristically been compromises, resolving disputes where agreement was impossible on the basis of any of the more obvious solutions. Joint control has been used in the past to prevent war by "tiding over" an impossible situation until the conflict dissolved or agreement was reached on some other solution (for example, in Memel and in Samoa). Similar to this was its use to establish a provisional government until the fate of the area could be decided (the Saar, Albania, and Leticia). It has also been tried in order to avoid the regrettable consequences of dividing up an international plum (Albania and Schleswig-Holstein). Certain states have sought through forms of joint control to obscure a particular power situation; thus they would deny their rivals an opportunity for expressing alarm over schemes for territorial aggrandizement (Sudan, Tangier, and Schleswig-Holstein). Most ambitious was the expectation that shared control would diminish the risks of war by eliminating rivalry among the great powers (Albania, Samoa, and Tangier). States have also agreed upon joint administration in order to prevent a rival from obtaining full control over a mutually desired area (Tangier, New Hebrides, and Leticia). Similarly, states have hindered one of their number from annexing a portion of a weak neighboring state (the Saar). In colonial regions especially states have chosen joint control for territory without intrinsic value but which they did not wish to see in the hands of a competitor (New Hebrides and Samoa). Great Britain has accepted joint control to appease junior members of the British Commonwealth more insistent than she on outright annexation (New Hebrides).

Das Memelgebiet, Kaunas: Spaudos Fondas; 1934; Albrecht Rogge, Die Verfassung des Memelgebietes, Berlin: Deutsche Rundschau; 1928; Robert Donald, The Polish Corridor and the Consequences, London: Thornton Butterworth; no date; John A. Gade, "The Memel Controversy," in Foreign Affairs, Vol. II (1923-24), pp. 410-20.

¹⁵ Danzig between the two world wars was not an example of joint control. The High Commissioner representing the League of Nations was the guardian of the constitution, and Poland was responsible for the foreign relations of the Free City, but the government was in local hands. Cf. P. E. Corbett, "What Is the League of Nations?", in *British Year Book of International Law*, 1924, pp. 119–48, at p. 141.

has described the condominium, the classical form of joint control, as a solution arrived at by states embarrassed for lack of a better plan. The Anglo-American agreement of 1939 establishing a condominium over Canton and Enderbury Islands illustrates the chief virtue of joint control—holding the future open until a better solution is possible.

Since joint control schemes are always "second-best" solutions reluctantly agreed upon for lack of anything better, it is scarcely surprising that they should develop serious defects, such as those now to be elaborated.

Absence of Ultimate Authority

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With divided responsibility it has proved almost impossible to make a final adjustment of conflicting demands. The ten years of joint administration in Samoa were marked by continual jurisdictional disputes among the condominium officers. However chaotic the consequences for general administration, none of the three states would abandon support for its own nationals or favored group in the event of a conflict. Without one final authority in Memel there was no definitive settlement of the Lithuanian claims that the government discriminated against her nationals.

Both in Schleswig-Holstein and in the New Hebrides the problem created by the absence of a single final authority was supposed to be obviated by dividing the jurisdiction of the two condominium powers. In the first case, by the Gastein Convention of 1865, Austria took over Holstein and Prussia took Schleswig. This division simply solidified the opposing forces within the condominium, and the conflict ended in war. In the New Hebrides, each state retained jurisdiction over its own nationals. Reluctance of France and Great Britain to give up power to a joint authority resulted in a variety of inconveniences, injustices, and failures to execute the convention's provisions.¹⁷

In the Saar, on the other hand, final authority lay in the League. Thus, when Saar coal miners struck during the Ruhr occupation and the French-dominated commission adopted repressive measures, the ensuing civil disturbances resulted in an inquiry by the League Council. Even there French influence was sufficiently strong to provide the basis for charges of whitewashing.¹⁸ Nevertheless, as a result of the inquiry many abuses were corrected and in general relations between the population and its government were improved.

¹⁶ J. L. Kunz, Die Staatenverbindungen, Stuttgart: W. Kohlhammer; 1929, p. 280; Kunz called condominium a Verlegenheitsschöpfung.

¹⁷ Lack of single ultimate authority has perpetuated disputes over the protection of native labor and land titles. The protocol of 1914, which was not ratified until 1922, made important improvements, especially in juridical matters, which were designed to counteract the mutual paralysis engendered by this "pandemonium" system.

¹⁸ Reynolds, work cited, pp. 121-28; Lambert, work cited, pp. 126-29; Florinsky, work cited, pp. 40-44; Russell, work cited, pp. 209-26; Donald, A Danger Spot in Europe, pp. 57-62.

Secondary Positions of Inhabitants

Contrary to the general belief that the native populations should fare better if delivered from control by one state, the welfare of the inhabitants has regularly been subordinated to the international position of the powers involved. In the case of Tangier, France and Spain were primarily interested in their Moroccan protectorates and wished exclusive control over as great an area as possible. Thus the international zone was artificially separated from its natural hinterland, and the boundaries were so restrictive as to prevent the possibility that Tangier could be in any way self-supporting. Furthermore, the administrative machinery devised to satisfy the demands of all participating states for political and administrative influence was so elaborate and expensive that the inhabitants had to bear an economic burden out of all proportion to the governmental benefits they received.

The powers insisted on Albanian autonomy solely for their own purposes, and her vital interests were sacrificed to preserve peace in Europe. They devised a governing commission of seven members, representing the six major powers and Albania, but agreement was obviously impossible because the members expressed irreconcilable national points of view. They did not even agree on the "viability" of the new state. Although a strong leader was needed to bring order and unity to Albania, the powers selected a weak, though well-meaning, prince who was acceptable to all only because he was likely to be ineffective. The manner in which they whittled down the new state's frontiers clearly illustrated their indifference to Albanian welfare.¹⁹

Both Samoa and the New Hebrides were only insignificant pawns in a larger political game. Their experience indicated that stability within the condominium was almost completely dependent on external factors having little or no relation to the immediate interests of the controlled area. Compared to backward areas in the Pacific which are under single control, colonial services in the New Hebrides have been very meager. Money and effort which could have been used constructively to raise the standard of living in these islands were wasted on costly and inefficient duplications in administration. The New Hebrides case also illustrates another danger where joint control has been adopted for an area of secondary importance

19 As a result of the tugging and hauling among the contending powers, half of Albania was handed over to her hereditary Slav enemies, including a million Albanian inhabitants, the most fertile and productive territory, and all important communities except Scutari and Valona. Although an international boundary commission tried to settle the southern frontier on equitable, rather than political, lines, in the end the decision was based on a diplomatic trade involving external considerations. Even then the Greeks failed to observe the line drawn. The result of these restricted boundary lines for the new-born country was economic ruin, starvation, and disorder. Swire, work cited, pp. 148–53, 163–72, 187–94, 202–06; Stickney, work cited, pp. 21–50; Peacock, work cited, pp. 205–23.

in world politics. In their more immediate concern for the major issues, the states involved may either forget its existence or fear to upset a barely workable *modus vivendi* by making drastic changes in its statute.

Financial Burden

Areas under joint control have usually by the very nature of the problem been too small to form efficient economic units. Since the base for collecting governmental revenues is restricted, subventions from the joint powers are generally necessary, unless the states are willing to see government services fall below a decent level. The need for subsidies raises a host of problems, such as how to distribute the burden among the joint powers equitably and to arrange for each state's responsibility in the budgeting process. Albania presented an extreme example of the pitfalls which might be encountered. When Austria and Italy sought to provide Prince Wilhelm with the funds required to establish and protect his government, the other powers in-They insisted upon an international arrangement to prevent the two states from exercising undue influence. Austria and Italy then advanced part of an agreed-upon loan. The other powers, which had been expected to subscribe larger portions later, never did so. The international commission, which was to control the funds, permitted only a nominal expenditure for the most important service, the gendarmerie. Meanwhile the prince squandered the money on useless ornaments, expecting more to be forthcoming. Although half the loan guaranteed by Italy and Austria was still due, Italy refused to authorize the commission to make further. payments unless she obtained certain special concessions, which were denied. Austria also refused assistance, fearing this would alienate Italy. bankruptcy hastened the downfall of the regime.20

Lack of Suitable Administrative Personnel

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Recruiting officials who would place the interest of the governed area above particular interests of their own states has been a perennial problem. Particularly difficult was the enticement of competent judicial officials to serve in areas of joint control. The special qualifications which were a prerequisite, such as knowledge of several languages and legal systems, plus the generally low level of the salaries enhanced this difficulty in Tangier as well as in Samoa, the New Hebrides, and the Saar. In areas under joint control extensive use of local personnel has usually been either impossible or unsatisfactory. Where the population is backward this is primarily an educational matter. In other areas of conflict, however, the local administrators may have the required skill and knowledge but lack the will to coöperate wholeheartedly with an international administration, as in the

²⁰ Swire, work cited, pp. 201 and 209; Woods, work cited, pp. 471-72; The Memoirs of Ismail Kemal Bey, pp. 286 and 382.

Saar. If they are given high places, as they were in Memel but not in the Saar, their presence may offend one of the contending states. Yet bringing in outside administrators has seldom been popular with the local population.

Complex Machinery

Dividing governmental power, especially where equality was demanded, has required machinery of great complexity. In the New Hebrides, for example, there was an exaggerated regard for the national prerogatives of both French and British. Although the area contained less than one thousand Europeans, few services were undertaken in common.²¹ Samoa presented a similar story of complicated machinery for a simple culture.²³ In Tangier the government threatened to collapse because it was so topheavy.²³ Three languages were spoken in the Assembly, three currencies circulated, and three separate postal systems were in operation. Changes necessitated by Italy's adhesion to the condominium act increased the complications and overstaffing in the administration.²⁴

Competition for Dominance

Joint control has characteristically provided an unstable regime because each co-sovereign continually competed with its partners for dominance and often deliberately sabotaged efforts to make the system succeed. The two years of condominium in Schleswig-Holstein were marked by endless altercations between Prussia and Austria, the chief point of contention being the succession to the ducal throne. Bismarck tried several expedients to

²¹ There were three currencies, and the separate French and British police systems could be used jointly only in case of special emergency. Crowning an elaborate judicial system of native and national courts was a Joint Court, presided over by an appointee of Spain, while the legal procedure was a mixture of French and British practice.

. ²² Superimposed on the tribal political organization of the Samoans was the office of the king, a totally artificial concept for Samoa. In addition there was a chief justice selected by a neutral state, and the capital was governed by a municipal council headed by a president selected in similar fashion. This administrative machinery provided a façade behind which the consuls of the three states functioned in a seldom harmonious fashion as advisers and controllers.

²³ The following officials and agencies governed seventy thousand people: the Sultan's representative, who was directly responsible for the administration of the natives; an International Legislative Assembly of twenty-six members representing the participating states, the Mohammedans, and the Jews; a Committee of Control formed by the consuls de carrière of the signatories of the Act of Algerias (actually they dwindled to seven); an Administrator; and three Assistant Administrators, of different nationalities. Finally there was a correspondingly elaborate judicial system. There were enough officials to govern a population ten times as large.

²⁴ In Memel, on the other hand, the government was relatively simple. Few important alterations were made in the customary forms and there were no special provisions for Lithuanian representation. The government was overthrown when Lithuania seized the territory

push Austria out; the issue was finally solved by a war resulting in Prussian annexation of the whole area.

Although the joint powers in Samoa were able, after much controversy, to decide on the original king, at his death the question of his successor divided them irreparably. During the native civil war which followed the constitutional choice of the new king, Germany supported the rebels. Condominium offices were overturned, and sailors from the warships of the three powers actively engaged in the warfare. When news of the conflict reached the powers they sent out an international commission to investigate. It recommended termination of the condominium, and Samoa was thereupon partitioned between Germany and the United States. Great Britain received "compensation" elsewhere.

During the short period Albania was under the joint control of six powers Italy and Austria were the main competitors. Here too the selection of the ruling prince proved the divisive question. The Italian government feared that the sovereign chosen by the powers would favor Austria, and it therefore supported Prince Wilhelm's chief rival, even fêting him after his expulsion from Albania as a traitor. Later the Italian government supported another group of insurgents because it desired to establish prestige among them as a counterweight to the Austrian partisans.²⁶

Class competition often intensified national rivalry for dominance over a jointly controlled area. In the Saar French manufacturers contended with a German working class population; in the Sudan it was Egyptian cotton growers versus British textile manufacturers; in Tangier it was the French commercial interests against the Spanish laboring class; in the New Hebrides it was the French plantation owners contending with British missionaries; and in Memel it was the German city-dwellers who struggled with rural Lithuanians.

Dominance of One Power

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Advocates of joint control usually expected that it would disperse power which they did not wish concentrated in a single state. Sooner or later, however, one state has obtained the dominant position in the government, thus minimizing the anticipated benefits. From the very beginning Great Britain was the principal power in the Sudan. In administration there was often no distinction made between this condominium and a regular colonial possession. As changes were made in the administration, the British passed over certain subordinate powers, not to Egyptians, but to native Sudanese in a deliberate movement toward "devolution." Furthermore, in the interest of native welfare, the condominium government severely restricted immigration from the densely populated country to the north which was supposed to be one of the joint powers. Actually the British feared that

²⁶ Durham, work cited, pp. 264 and 268; Helmreich, work cited, p. 438; Swire, work cited, p. 198; *Memoirs of Ismail Kemal Bey*, p. 383.

unlimited immigration would admit Egyptian nationalists, who might threaten British supremacy through political agitation.²⁶

In Leticia Colombia wielded the greater power, because its legal position was recognized as much stronger than Peru's.²⁷ Colombian troops formed the international force, and Colombian officials regularly advised the international commission in the performance of its functions.

Because France was in a particularly strong political position following the First World War, it secured a predominant role in the international government of Tangier. Since the Shereefian Empire was a French protectorate, all powers granted by the Statute to the Sultan were in fact given to France. One-half the voting strength in the International Legislative Assembly was in the final analysis French. As the posts and telegraph system were Shereefian enterprises, they also were really French. In addition France was able to separate the customs administration from activities controlled by the international body and made it dependent on Moroccan customs administration. France also obtained undivided responsibility for diplomatic respresentation of Tangier abroad.

In the Saar government, as in Tangier, the French had paramount power, especially in the period prior to the appointment of a Canadian chairman of the commission in 1926. Although there was a French representative on the commission, no German was included, and for some years Germany was not even a member of the controlling authority, the League of Nations. The early French chairman, who was the actual executive, wielded great administrative power frankly in the interests of his own state. The majority of the early members were Francophiles. French control of the mines gave France additional economic power. The Treaty of Versailles provided for a customs union between the Saar Territory and France after five years. French troops were maintained in the territory until 1928. Frenchmen filled the highest official posts. Finally, although the treaty gave the function of diplomatic representation to the international commission, it lacked the facilities, and France therefore assumed this role as well.

It is true that although one state usually became the paramount power in jointly controlled areas, its freedom was somewhat restricted by the partners in the scheme. The dubious advantage of placing obstacles in the way of effective administration by the power which will in any case become dominant should be balanced against the unquestionable advantage of efficient, harmonious, and constructive administration by a single state from the beginning.

- 26 Royal Institute of International Affairs, Great Britain and Egypt, p. 36.
- ²⁷ Peruvian nationals had forcibly seized the disputed area, thus bringing the contest to a head.
- ²⁸ Reynolds, work cited, p. 128; Lambert, work cited, pp. 92–95; Florinsky, work cited, p. 23; Russell, work cited, pp. 207–08. For a different view, cf. Wambaugh, *The Saar Plebiscite*, p. 78.

Suppose that to protect the interests of the native population a multinational agency should govern an ex-enemy colony. The representative from one power may urge that the economy of the region demands the development of a particular type of industry, for which capital will be provided on some international basis. But another representative will charge that such a development would unfairly compete with its own industry. At this point the conflict ceases to be merely a contest between two economic groups and becomes one between two nations. Or one representative may believe that no economic progress is possible unless agricultural enterprises are communally operated, which may run counter to another state's belief in salvation through the private ownership and operation of small farms. Again, one state's representative may demand that in line with the trust to develop self-government, native officials be made completely responsible for the administration of public health services or of the police. Another representative will declare this policy to be ruinous to the sanitation program which is to prepare natives for a more active economic and political life. A third will fear that outside interests will be rendered insecure because the local police are incompetent. a fourth will protest that granting so much administrative autonomy in this area will have an unsettling effect on the adjacent colonies governed by his state. All these controversies are encountered in any colonial area. but when the government is centered in one state they seldom develop into international conflicts. Yet conflicts between states over the government of ex-enemy colonies are exactly what joint control is supposed to avoid.

CONDITIONS FOR EFFECTIVE CONTROL

The serious defects inhering in constitutional arrangements for sharing the governing power make clear why joint control is a "second-best" solution. If, nevertheless, there is no alternative, an understanding of how such schemes may be made to operate with optimum satisfaction is vitally necessary. Experience with joint control suggests a number of precepts which should be observed if an admittedly faulty system is to work more efficiently and create the least conflict.

1. The period of joint control should be kept short. In the Saar the protracted fifteen-year international regime not only caused the normal parliamentary institutions to wither from disuse, but also generated a prolonged sense of insecurity owing to the uncertainty concerning the ultimate fate of the territory. Since both the British and the French for decades expected the New Hebrides condominium to dissolve in short order, more effort was expended on bringing the regime to an end than on

²⁹ The Saar evidence might be regarded as an argument for a very long period of joint control in order to provide the confidence necessary to attract financial investment. However, the disadvantages of shared administration are likely to make for an unstable regime regardless of length of tenure.

correcting defects. Although the two powers tinkered with the machinery occasionally, long periods elapsed before glaring mistakes were remedied. Part of the success of the Leticia government was due to the promptness with which a plan was formulated and put into execution, thus preventing further violence arising from uncertainty over the outcome. Meanwhile, the parties to the dispute understood the duration of the commission to depend on their speed in coming to agreement, which provided a motive for doing so as soon as possible.

- 2. Sanctions should be adequate to uphold the authority of the government. After the European powers had agreed on the northern and southern boundaries of Albania they failed to exert sufficient force to compel the Serbs and Greeks to withdraw outside these lines. Once they placed Prince Wilhelm of Wied on the throne, they withheld the moral and material support necessary to enable him to keep order. Lithuania was permitted to keep her stolen control over Memel, because the Allies, already morally compromised by their acquiescence in Poland's seizure of Vilna, were not ready to back up their international rule by force. In fact Lithuania purposely chose the moment when France was fully engaged in occupying the Ruhr.
- 3. Administrative officials should maintain their neutrality toward conflicting local political interests. After the division of Schleswig-Holstein into two administrative spheres, Austria governed Holstein exactly as though it were held in trust for the prince she favored. In turn, Schleswig was ruled as if the Prussian king were the sole possessor of the territory, and the Prussian governor laid an iron hand on any who showed their devotion to Austria's choice for prince. When Austria convoked the Estates and Prussia marched into Holstein to prohibit them from meeting, the regime collapsed. Similarly, the end of joint government in Albania was assured when Italy and Austria supported opposing national groups which were struggling for control of the country. Some writers suggest that officials for future joint control projects not be chosen from the interested great powers. The successful administration of Leticia by commissioners from the United States, Brazil, and Spain would support such proposals.
 - 4. Local disputes should be settled locally, before they acquire international importance. The very organization of the Albanian commission facilitated the passage of the controversy over to the sphere of great-power politics. Each representative regularly acted according to the instructions of his own government, not according to his personal views as to what might be beneficial to Albania. If any member regarded a matter as having political importance it could not be decided until after reference to the home governments. In the Saar insignificant matters normally furnished the occasion for division along national lines although viewed objectively they involved no major conflict of interest. For Germany was sensitive to every opportunity to claim that a commission act adversely affected the German inhabitants.

- 5. Minorities should be sufficiently protected so that disruption of the existing order cannot be easily justified by claims of persecution. Lithuania rationalized the seizure of power in Memel by claiming that the German officials in the international government had suppressed the Lithuanian language and institutions. However, when the international commission in the Saar, recognizing its duty of neutrality respecting the coming plebiscite, supported the right to free speech of the minority which was urging a vote against rejoining Germany, the majority regarded this action as discriminatory.
- 6. Fiscal policies must not be unduly burdensome, nor should they appear to be patently inequitable to any of the participants. The British in the Sudan carefully avoided taxing the natives heavily, and thus they prevented much friction. But Egypt was required to make contributions to the government much larger than Britain, which aggravated Egyptian opposition to the administration. Probably the major cause of dissatisfaction in Tangier was financial.³⁰ Considerable opposition to the Saar government was created by fiscal policies favoring the French.³¹
- 7. The administrators should be intimately acquainted with the culture of the area and should not unnecessarily interfere with local customs. The European powers, ignorant and disdainful of Samoan practices, made arrangements for a Samoan king which were completely at variance with local customs. The result was ever-increasing native hostility toward the international regime. In Albania neither the ruling prince nor any of the governing commission except the Albanian representative knew or tried to learn the Albanian language and Albanian conventions. This ignorance led the prince to expose himself foolishly to his enemies. On the other hand, the British carefully respected Moslem customs in the Sudan, and were rewarded in the First World War by the loyalty of the former Turkish vassal.
- 8. Responsibility for the welfare of the inhabitants should be clearly assigned, and there should be some ready method by which the desires of the people can be registered with those in authority. Despite their urgent pleas, Tangier citizens were unrepresented at the international conferences
- ³⁰ The lack of a broad tax base, high fixed charges on the administration which the Zone assumed involuntarily and which profited the neighboring French and Spanish protectorates, the high cost of the customs administration, which was under French Moroccan control, and the general overstaffing of the government all caused local hostility to the regime. Cf. Stuart, work cited, pp. 132–33 and 211–21; Tunis, work cited, pp. 676–77.
- ³¹ These included the customs union with France, the introduction of the franc, which created a tariff barrier against Germany, and the reduction of the tax on coal at the Frenchowned mines, which redistributed the tax burden to the disadvantage of the German inhabitants.
- **The governmental arrangement disregarded the tribal organization of the country, while ignorance of Albanian customs seriously handicapped the earnest Dutch gendarmerie officers in defending the government against the rebels, led by more sophisticated Balkan officers.

deciding their fate, nor were their interests certain to be represented in the International Legislative Assembly, because it was not elective. more, this legislature had no jurisdiction over the Mohammedans and Jews, who were supposed to be under the authority of the Sultan, an arrangement which concealed French control.²³ In the Saar, except for local assembly elections, the inhabitants were disfranchised. The commission created a consultative assembly, but refused the political parties' appeals to give it the powers of interpellation, initiative, presentation of grievances, and parliamentary immunity. Therefore the populace did not regard it seriously and consultation became an empty gesture. Under the Versailles Treaty the commission was the interpreter of its own powers, which did not add to the responsible character of the regime. The citizens could and frequently did petition the League through the commission whenever they believed they had a grievance. Furthermore, the commission maintained a high standard of administrative service. But for a highly civilized area it was a rootless government, producing a fine flower at the expense of democratic procedures.

- 9. The area should be governed as a whole, although this does not necessarily rule out some functional division among the governing authorities. Division of administrative spheres along national lines, as in Schleswig-Holstein (where the partition was territorial) and in the New Hebrides (where it was made according to the nationality of the subjects) produced more friction than it avoided. In particular it aggravated the already unfortunate diffusion of responsibility inherent in joint control.
- 10. Modifications in the governmental arrangements should be promptly made as experience dictates, especially because of the experimental character of the regime. Despite a specific amending provision in the Berlin convention, the powers turned a deaf ear when Samoan residents, led by Robert Louis Stevenson, pleaded to have certain defects in the condominium administration remedied.³⁴ In contrast, the willingness of the co-sovereigns of Tangier to make important constitutional changes not long after the establishment of the international government helped preserve that regime.
- 11. The joint control arrangement should include some accountability to a general international organization. This would tend to prevent the governing states from taking unjustified advantages of their position. Furthermore, it would give salutary publicity to decisions concerning the controlled area, lack of which helped to discredit the old-fashioned condominium. The only cases where a joint government terminated peacefully and constitutionally were the Saar and Leticia, where ultimate responsibility lay in the League of Nations. In most of the others the regime disintegrated in violence, while the rest continued on an uneasy basis.

²⁸ Cf. Stuart, work cited, pp. 159 and 210; Harris, work cited, pp. 16-17.

^{*} Ryden, work cited, pp. 532-33.

INTERNATIONAL GOVERNMENT

Under certain conditions government by an agency of a general international organization might eliminate the defects characterizing more direct forms of joint control, or at least minimize them. If the general international organization develops as an authoritative and independent entity apart from the member states, and its agents are willing and able to govern free from pressure by interested powers, national competition for dominance culminating in one state's supremacy could be avoided. Whether or not the general international organization could actually constitute a unified ultimate authority would depend upon how completely the power of particular interested states was balanced by the power of the disinterested mem-The nomination of the governing officials would be a critical point in determining a harmonious outcome. If it is conceivable that the great powers interested in the problem area would agree to government by representatives from disinterested states, the possibilities of international conflict over the administration would be greatly diminished. The Saar is the only important example of government by an agency of a general international organization. None of the conditions necessary to remove the disadvantages of joint control existed in that case.

With respect to the safeguarding of native interests, international government might be at least as effective as administration by a single reputable state if the following circumstances were to prevail: (1) loyalty to a new international organization with great prestige could replace patriotism as a resource upon which to draw for conscientious officials laboring in alien and inhospitable lands; (2) the general international organization would have sufficient funds upon which to draw for conducting a positive program of social and economic development; (3) the general international organization would be sensitive to the pressure from enlightened groups in the advanced states, thus substituting this kind of democratic responsibility for that which operates through parliamentary institutions in colonial powers.

It is significant that the inhabitants of many British colonies distrust any potential international administration more than their present admittedly faulty government. For they know where the responsibility for their welfare now lies. One ruling state is easier to deal with than several. Furthermore, how can they be sure that all those participating in their government (in which they have little or no voice) will not combine against the interests of the colonial people? 35

The possible advantages of an untried international administration which may not prove responsive to public opinion would seem minor compared to administration by a state which is known to contain articulate and enlightened groups concerned about backward peoples. If these groups can-

²⁵ W. M. Macmillan, Democratise the Empirel A Policy for Colonial Change, London: Kegan Paul, Trench, Trubner & Co.; 1941, pp. 49-50, and Lord Hailey, The Future of Colonial Peoples, Princeton: Princeton University Press; 1944, pp. 57-58.

not make themselves felt through the democratic processes of their own country, how can they hope to be influential as part of a very amorphous public served by a general international organization?

Conclusions

Because of the impossibility of annexation or independence for ex-enemy possessions, the unsatisfactory results of joint control, and the uncertain character of government by an agency of an international organization which does not yet exist, we come back to the mandate system, which was the considered solution of the peace-makers after the First World War. Critics declare that the Permanent Mandates Commission's supervision was not sufficiently developed to be an effective check on the mandatories. However, if international supervision extends beyond fact-finding and moral persuasion it will become participation in the governmental process. Thus it will be converted into either joint control or international administration, depending upon the unity and influence of the general international organization.

With increased powers of investigation and wider facilities for publicizing their findings the Permanent Mandates Commission could have been more effective in curbing undesirable features in the mandates administered by responsible states such as Australia and New Zealand. The major difficulty arose from the fact that some mandates were administered by the wrong states. A more careful appraisal of the qualifications of the candidates might have avoided the difficulties in the Marshalls, Marianas, and Carolines. Today a more fortunate choice is possible for this area. Both power and welfare considerations point to the desirability of the United States as the mandatory.³⁶

Although agreement regarding particular mandatories is quite conceivable for Italy's African colonies, a mandate administration for Korea seems out of the question. None of the neighboring powers would be willing to see another become a mandatory, and the United States would decline any immediate responsibility. Beyond a military guarantee of Korean integrity further formal intervention by the powers on a joint basis might cause as much conflict as it was intended to avoid. The dangers implicit in the Korean situation might only need a joint government to make them explicit.

No ready-made solution is likely to fit an area of such great strategic importance as Korea. Perhaps here (as in many other backward areas) the search for a single over-all organizational plan should be abandoned. By breaking the problem up into its parts a multiple approach is possible. Korea might be granted formal independence. To prevent a power vacuum

²⁶ In this case, at least, the mandate system would also have to be modified to permit the fortification of these islands for the use of at least one of the guardians of peace in the Pacific. from inviting aggression, the great powers will have to agree on a joint military policy regarding Korea. No mechanism can force them to agreement, but without it the Korean problem cannot be solved. In addition, native welfare and the development of self-government could be safeguarded and promoted by a variety of international economic and social agencies. For example, the I.L.O. could assist in the regulation of labor conditions, and the services of an international investment fund or a development corporation could be enlisted for industrial expansion. Furthermore, Korea could be included in a regional organization which would combine collaboration with service and advice in raising living standards and improving government administration for colonial and semi-colonial countries in that area. Thus international action could modify formal independence in practice by influencing the conduct of government at several points.

The mandate system has been criticized as a disguised form of annexation by one state. We have seen that joint control usually ends in domination by one participant. Is there yet any evidence that international administration may not merely cloak irresponsible control by one power? For the sake of security and the respect of world opinion let the decision be joint, but for the sake of the inhabitants let the government be controlled by a single responsible state held to account by a general international organization.

THE INTER-AMERICAN SYSTEM AND THE CONFERENCE OF CHAPULTEPEC

By MANUEL S. CANYES

Chief of the Juridical Division, Pan-American Union

The inter-American system, initiated in 1826 at Panama with the First Congress of American States called by Simón Bolívar, the Liberator, and definitely established in 1899 by the First International Conference of American States at Washington, has experienced throughout its long history a sound, steady growth. No system of international organization in the world can claim a similar record. In spite of great obstacles encountered at various times, the inter-American system has made continuous progress and has emerged with greater strength after passing through each of its many stages of gradual development.

The key to this outstanding success is to be found primarily in the harmonious interplay of the following factors: first, the flexibility of the system, that is, its easy adaptation to changing circumstances, to new needs, new ideas, or new developments; and secondly, the spirit of friendly cooperation which has always been the guiding principle in every field of inter-American relations.

As a regular practice in the inter-American system, a step forward is usually taken when the requirements of the time make it advisable, and when the demand for action in a particular direction is general. If the measure is sufficiently important and in addition has the backing of the majority, its proposal always seems opportune and cooperation is automatic. On the other hand, if the proposal lacks both sufficient importance and support, it rarely goes beyond the status of a project.

In accordance with this practice, projects which are presented at inter-American conferences but fail to merit general approval or support by the American governments, are referred, as a rule, to the Pan-American Union or to some other inter-American agency for further study and for submission to a subsequent conference, in the expectation that by that time they will, in their revised form, become generally acceptable. In this manner the will and the needs and the interests of the majority are respected, thereby avoiding the imposition of measures which the countries as a whole are not yet ready to adopt.

In harmony with this procedure numerous and far-reaching advances have been made through the resolutions, declarations, and conventions adopted at inter-American conferences. These advances were nowhere so important and radical as at the Conference of Chapultepec. This is not surprising, for at no other time in the history of the Pan-American movement were there more critical problems facing the American nations.

Many agreements adopted at this Conference were the direct result of new requirements in the Americas, of new conceptions of international organization in the light of recent experience and of the Dumbarton Oaks Proposals, as well as of new developments precipitated by the present world conflict. Others were merely a logical consequence of efforts made in former inter-American gatherings which had not been found practical or expedient before, but which at Mexico became generally recognized as essential to strengthen the Pan-American post-war organization and to make it more workable and useful.

The Conference of Mexico, known officially by the name of Inter-American Conference on Problems of War and Peace, was held in the historic Chapultepec Castle in the capital city of our neighbor Republic from February 21 to March 8, 1945. Its purpose was to afford the American governments, through their respective delegations, an opportunity to consider jointly ways and means of intensifying their collaboration, to determine the participation of America in the future world organization, and to improve and strengthen the inter-American system as well as the economic solidarity of the hemisphere.

It was a momentous meeting attended by large delegations composed of the most distinguished statesmen of the continent. Seventeen of the delegations were headed by the Ministers of Foreign Affairs of the respective countries.

Among the most important resolutions adopted at the Conference, two stand out because they represent particularly far-reaching undertakings. The first relates to continental security, and the second to reorganization of the inter-American system. Both were the result of years of constant effort to insure the maintenance of peace and security in the continent and to strengthen the international organization of the Americas; both were the natural and logical development of currents of thought which had been gathering momentum in the course of recent years and reached a climax at Mexico City in 1945.

An analysis of these two resolutions reveals interesting facts.

CONTINENTAL SECURITY

With reference to continental security, the Conference adopted Resolution VIII, entitled "Reciprocal Assistance and American Solidarity." This resolution, which was given the name of "Act of Chapultepec," embodies a most important and solemn agreement. It provides for consultation by the American governments "in case acts of aggression occur or there are reasons to believe that an aggression is being prepared by any other State against the integrity or inviolability of the territory, or against the sovereignty or political independence of an American State . . . in order to agree upon the measures it may be advisable to take."

The measures that the governments may take to meet threats or acts

of aggression include: "recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; breaking of postal, telegraphic, telephonic, radio-telephonic relations; interruption of economic, commercial and financial relations; use of armed force to prevent or repel aggression."

The Act of Chapultepec is divided into two parts. The first is in the form of a declaration which serves to give effect immediately and for the duration of the war to the principles and procedures set forth therein. The second part is cast in the form of a recommendation suggesting that, following the establishment of peace, the respective governments shall take the necessary steps to perfect and perpetuate the instrument through the conclusion of a treaty. The second part is intended to put into operation in peace time the principles and procedures stipulated in the Act in conformity with the constitutional processes of each Republic in order that the instrument may be in force at all times.

Both the Declaration and the Recommendation constitute a regional arrangement which, as provided in the Act, must be consistent with the purposes and principles of the general international organization.

When the Conference of Mexico was held there was a general idea of the purposes and principles of the world organization because they had been provisionally formulated at Dumbarton Oaks.

The Dumbarton Oaks Proposals provided that the settlement of local disputes through regional arrangements or agencies, either on the initiative of the states concerned or by reference from the Security Council, should be encouraged. However, it also provided that no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

The latter provision made it clear that, while the utilization of regional enforcement measures was not precluded, the application of such measures would be subject in all cases to prior approval by the Security Council. In other words, only the Security Council would have power to authorize in all instances the form of enforcement action to be taken, whether under existing regional methods or under its own, making reference to the Security Council by the regional agency before such action could be taken as a mandatory obligation.

In view of the difficulty of reconciling the foregoing stipulations in the Dumbarton Oaks Proposals with the desire of the Latin American nations to keep the inter-American system autonomous, particularly the Act of Chapultepec, the question of finding a definite form of integration of regional arrangements with the World Organization became one of the most difficult problems that faced the United Nations Conference at San Francisco.

The Latin American nations were in agreement with the general principle that the integration and coördination of regional arrangements with the world security organization is an imperative requirement if international

peace machinery is to be effective. As a matter of fact the Preamble of Resolution IX of the Conference of Mexico contains a clause stating specifically that "the inter-American system should maintain the closest relations with the proposed general international organization and assume the appropriate responsibilities in harmony with the principles and purposes of the general international organization." There was a difference of opinion, however, among the American nations over the manner and degree in which such integration and coördination should be effected, both with regard to the. peaceful settlement of disputes and to peace enforcement procedures.

With reference to the pacific settlement of disputes, the American nations have held consistently in the past that this is a continental responsibility. This view is based on the premise that a local conflict should be settled through the machinery available in the regional system, and until this machinery breaks down the conflict should not be the concern of the over-all world system, because until then it does not constitute a threat to international peace. International machinery should be set in motion only as a last resort.

After four weeks of intensive debate and constant exchange of views in San Francisco, a formula was finally reached and presented to the Committee dealing with regional arrangements which was unanimously approved by the Committee and later by the Conference itself.

The text of the formula as it has been incorporated in the Charter is as follows 1:

CHAPTER VIII

SECTION A

3. The parties to any dispute the continuance of which is likely to endanger the maintenance of international peace and security should obligate themselves, first of all, to seek a solution by negotiation, mediation, conciliation, arbitration or judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. Security Council should call upon the parties to settle their dispute by such means.

CHAPTER VIII SECTION B

New Paragraph 12

Nothing in this Charter impairs the inherent right of individual or collective self-defense if an armed attack occurs against a member state, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under this Charter to take at any time such action as it may deem necessary in order to maintain or restore international peace and security.

¹ Chapters, Sections, and Numbers correspond to those in the Dumbarton Oaks Proposals. (See Arts. 33, 51, 52, 53, and 54 of the Charter).

CHAPTER VIII

SECTION C

1. Nothing in the Charter should preclude the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and their activities are consistent with the purposes and principles of the Organization. The member states comprising such agencies or entering into such arrangements should make every effort to achieve peaceful settlement of local disputes through such agencies or arrangements before referring them to the Security Council. The Security Council should encourage the development of peaceful settlement of local disputes through such regional arrangements or by such regional agencies, either on the initiative of the States concerned or by reference from the Security Council.

This paragraph in no way impairs the application of paragraphs 1 and

2 of Section A of this Chapter.2

The Director General of the Pan-American Union in a Report submitted to the Governing Board of the Union on the action of the San Francisco Conference with regard to regional arrangements, draws the following conclusions from the principles embodied in the formula transcribed above: ³

- 1. Upon Regional agencies or arrangements rests the primary responsibility to seek a pacific settlement of disputes before they are referred to the Security Council. In fact, the Security Council is expected to encourage the solution of local disputes through regional arrangements or by regional agencies, either on the initiative of the States concerned or by reference from the Council.
- 2. The foregoing provision, however, is subject to two limitations:
 (a) The Security Council may investigate any dispute, or any situation which may lead to international friction or give rise to a dispute; and (b) any State, whether member of the International Organization or not, may bring any such dispute or situation to the attention of the General Assembly or of the Security Council. The jurisdiction of the Council within these limitations, however, has been construed to extend only to the investigation of a question, and not to the replacement or duplication of the efforts of the regional agency in seeking a peaceful settlement.
- 3. The right of any group of nations to enter into agreements for self-defense is recognized. Consequently, the Act of Chapultepec, or the treaty that may be concluded to convert this wartime measure into a peacetime agreement, is entirely in harmony with the World Charter.
- ¹ The paragraphs referred to are as follows:
 - 1. The Security Council should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security.

2. Any state, whether member of the Organization or not, may bring any such dispute or situation to the attention of the General Assembly or of the Security Council.

(See Arts. 34 and 35 of the Charter).

¹ See Report submitted to the Governing Board of the Pan-American Union by the Director General, Congress and Conference Series No. 48.

4. Should any nation party to such a defense agreement be attacked, the other contracting States may carry out their obligations to join in its defense, as an emergency measure and until the Security Council has taken the measures necessary to maintain international peace

and security.

5. The Security Council retains the right to intervene directly whenever it may deem it necessary in order to maintain or restore international peace and security. Action by the Security Council, however, in connection with the investigation of a dispute or the use of force, may be prevented if one of the permanent members exercises its veto power. This veto power does not extend to discussion in the Council or to the preliminary phase of peaceful settlement. If a permanent member is a party to a dispute, such member must refrain from voting in any action of the Council directed towards peaceful settlement. In such a case the permanent member can only exercise its veto power with regard to the application of sanctions and enforcement measures directed against it.

In order to give permanent force and effect to the Act of Chapultepec, adopted at Mexico as an emergency measure, and to have it conform with the provisions of the world charter, it will be necessary, as contemplated in the Act itself, to conclude a special treaty.

In this respect the Secretary of State of the United States, Edward R. Stettinius, Jr., informed the Latin American delegates at San Francisco, on May 15, 1945, and again on May 28, in his world-wide radio address, that it was the intention of the Government of the United States to undertake in the near future the negotiation of a treaty with its American neighbors in order to put the Act of Chapultepec on a permanent basis, in harmony with the world charter.

With further reference to the Act of Chapultepec, there is an additional point worth noting, because it marks a continental departure from an old established principle—the question of the application of sanctions. A system of sanctions has always been regarded as unnecessary in this hemisphere because of the pacific temperament of the peoples of America and because the settlement of differences through peaceful procedures has always been one of the cardinal principles of the inter-American system.

Attempts have been made at different inter-American conferences to bring up the question of sanctions, but the matter has failed consistently to receive favorable consideration, and as a result no definite provision has been made for the application of coercive measures. The American nations until now had only gone as far as to provide for sanctions in a general or limited way. There are two instances in inter-American peace agreements where sanctions of this type are stipulated. The first is found in the Anti-War Treaty of Non-Aggression and Conciliation, signed at Rio de Janeiro in 1933. Article 3 of this Treaty provides:

In case of noncompliance, by any state engaged in a dispute, with the obligations contained in the foregoing articles, the contracting states undertake to make every effort for the maintenance of peace. To that end they will adopt in their character as neutrals a common and solidary attitude; they will exercise the political, juridical, or economic means authorized by international law; they will bring the influence of public opinion to bear, but will in no case resort to intervention, either diplomatic or armed; subject to the attitude that may be incumbent on them by virtue of other collective treaties to which such states are signatories.

The second instance appears in the Convention to Coördinate, Extend and Assure the Fulfillment of the Existing Treaties between the American states, signed at Buenos Aires in 1936, where the foregoing provision is reiterated.

As recently as the Eighth International Conference of American States held at Lima in 1938, the establishment of sanctions was not regarded as "urgent . . . since the pacific and juridical relations which exist between the countries of America do not warrant them," and the "procedure of consultation would be adequate to meet any eventuality."

The American republics, until the Conference of Mexico, had preferred to adopt a policy of continental responsibility for the maintenance of peace through the procedure of consultation. This procedure aimed at the solution of all disputes or conflicts by peaceful means short of diplomatic or armed intervention.

The procedure of consultation established in Buenos Aires in 1936 and implemented at Lima in 1938 is one of the most progressive steps in the recent history of the inter-American movement. The practical application of this doctrine through the Meetings of Ministers of Foreign Affairs at Panama in 1939, Havana in 1940, and Rio de Janeiro in 1942, has enabled the American governments during the present emergency to adopt a common and solidary policy in the face of the grave problems which confronted them.

At Mexico City this doctrine was further implemented by the adoption of the Act of Chapultepec. Until then the governments had provided only for consultation to agree on the measures which might be advisable to take to preserve the peace of the Hemisphere. As previously stated, the use of sanctions to insure peace had not been explicitly stipulated. In the Mexico Conference, the Governments took the final step. They agreed on specific measures to insure the peace of the hemisphere at all costs, including the use of armed force.

The Act of Chapultepec, described as a genuinely great achievement and the most significant step in the development of international policy in the Western Hemisphere, is one of the most important documents adopted by inter-American conferences. It marks the beginning of a new phase of the good neighbor policy among the nations of the Western Hemisphere. It signifies the culmination of a series of principles incorporated in the international law of the American states since 1890 by means of conventions, declarations and resolutions, and provides the final implementation of all these principles.

The significance of the Act cannot be better emphasized than by reproducing here the remarks made before Committee III by Senator Tom Connally, Chairman of the Foreign Relations Committee of the United States Senate, at the time the instrument was approved by acclamation. Senator Connally stated:

As one of the representatives of the United States Delegation, I want to express the great pleasure and supreme gratification at the results of

this Committee in approving the Act of Chapultepec.

We of the United States are very happy to participate in this Conference, and have a part in the consideration of international arrangements whereby we join with you in the preservation of peace and security in the entire Western Hemisphere. It has long been the ambition of Western Hemisphere Republics to preserve their integrity and see that no alien system from Europe or elsewhere be established here. By action of this committee, that is the objective of all the American states. We are united in the objective that aggression shall never come from other shores to invade the sanctity of America. No longer is this the task of one or two nations. It is the task of all.

This conference gives unity of purpose so that all Republics of this Hemisphere are united to resist interference from abroad in the Western Hemisphere. But it goes beyond that. No ambitious power in this Hemisphere can contemplate the conquest of another republic in this Hemisphere. The Act recognizes the equality of states—it protects

both the weak and strong.

We do not ignore the organization of the over-all international organization on peace and security. We propose that the regional organization shall be integrated and coordinated with the world or-

ganization.

We hope that the San Francisco Conference may construct a world organization on the same principles reached here. Within that framework, looking towards peace and security of the entire world, we are giving—by our action now—courage and hope to the advocates of

security and peace the world over.

This is a forerunner of what we hope will happen at San Francisco. This is the beacon which shall enable the States at San Francisco to see the roadway established here. . . . I believe this will rank in future years among the great state papers set down for future generations to observe. It is an epochal document, which shall mean peace and security in the Western Hemisphere for years to come, and a great influence toward guaranteeing that aggression and conquest shall be chained, and that those who shed the blood of innocent people shall be curbed forever.

The Committee which studied and approved the project resolved to insert the foregoing statement in the proceedings of the Conference and to consider it as interpretative of the Act of Chapultepec.

REORGANIZATION OF THE INTER-AMERICAN SYSTEM

The action second in importance taken at the Mexico Conference was Resolution IX, entitled "Reorganization, Consolidation and Strengthening of the Inter-American System." This resolution embodies many provisions which not long ago might have met with insurmountable opposition, but which at Mexico were enthusiastically approved because they were deemed essential to make Pan-Americanism more dynamic and more in keeping with new world conditions. This emphasizes once more the oft-repeated characteristic of the inter-American system, that is, its adaptability to changing circumstances and to present requirements. The events of the last few years have created in America a new outlook in conformity with the times, a demand for bold action to meet today's realities.

The reorganization of the inter-American system is quite sweeping. To make this reorganization more permanent and effective, provision is made for a Charter to be drafted by the Governing Board of the Pan-American Union and submitted for approval to the Ninth International Conference of American States, scheduled to meet at Bogotá in 1946.

In addition to reorganizing the inter-American system, the project is intended to coördinate and improve the existing inter-American instruments for the prevention and pacific solution of controversies. The latter part of the draft is to be based on the project which the Conference entrusted to the Inter-American Juridical Committee.

Furthermore, the Charter is to be accompanied by two Declarations, one on the "Rights and Duties of States" and the other on the "International Rights and Duties of Man." These declarations will serve to define the fundamental principles of international law and will appear as an annex to the Charter "in order that, without amending it, the declarations may be revised from time to time to adapt them to the requirements and aspirations of international life."

The most important provisions in Resolution IX are the following:

- 1. Holding of the International Conferences of American States at four-year intervals (instead of five as had been the general practice heretofore).
- 2. Holding of Meetings of Ministers of Foreign Affairs annually (instead of at irregular intervals, except in the year for which an International Conference is scheduled). Special meetings may be called at any time when they are requested, to consider exclusively emergency questions, provided that the call is made upon the vote of an absolute majority of the Governing Board of the Pan-American Union.

These two types of Conferences, however, will retain their former well-defined scope. The first will formulate general inter-American policy, and determine the structure and functions of inter-American instruments and agencies. The second, of a consultative character, will consider problems of great urgency and importance concerning the inter-American system and with regard to situations and disputes of every kind which may disturb the peace of the American republics.

3. Composition of the Governing Board of the Pan-American Union. Up to the present the Board has been composed of the diplomatic representa-

tives accredited to the Government of the United States, although since the Sixth International Conference of American States held at Havana in 1928 the Governments have had the right to appoint special representatives.

The Mexico Conference completely modified this practice by providing for representatives ad hoc, designated by the American governments and with the rank of Ambassadors, entirely independent of the diplomatic missions accredited to the Government of the United States.

4. Assignment of political functions to the Governing Board. The Pan-American Union has always lacked the explicit power to exercise so-called political functions. A resolution adopted at the Sixth Conference in 1928 provides: "Neither the Governing Board nor the Pan-American Union shall exercise functions of a political character."

This stipulation contains an undefinable limitation, as it is very difficult to determine which functions are strictly political and which are not. In practice many functions exercised by the Pan-American Union directly, and most of those exercised through the Governing Board, are political in nature. After all, the Pan-American Union is the official representative of the governments which compose it, and in the service of these governments it is bound to do many things which may be classified as political. In reality this prohibition has a very limited restriction and undoubtedly it was always intended to be so.

Although not specifically provided, there are two main functions beyond the power of the Pan-American Union, because they have been entrusted to other bodies: the formulation of inter-American policy and the settlement of controversies. The first is reserved to the International Conferences of American States, to the Meetings of Ministers of Foreign Affairs, and to a few special conferences. The second is entrusted to agencies created by the inter-American conferences.

In both of these, however, the Pan-American Union exercises certain well-defined functions. With reference to the first the Pan-American Union calls the conferences, prepares the programs in consultation with the governments, and implements or executes the recommendations and resolutions adopted. With regard to the second the Pan-American Union is empowered to take certain steps leading to the appointment of members of agencies for the settlement of disputes.

There are a few other matters expressly kept outside the jurisdiction of the Pan-American Union through action of the conferences and assigned to other bodies, among which may be mentioned the codification of international law. In all of these, however, the Pan-American Union takes an active part, and frequently acts as intermediary between those agencies and the governments.

In conclusion, the limitations are vague and reserved to only a few fields, principally to the field of the settlement of controversies.

At Mexico City the Pan-American Union was not assigned political functions in so many words. The term "political" has many connotations and

is misleading. Consequently it was considered best not to use it. However, that the Conference intended the new Board to be clothed with such powers, within certain fixed limitations, is quite plain both from the deliberations of the delegates and from the new functions given to the board.

Article 4 of Resolution IX provides:

In addition to its present functions the Governing Board of the Pan-American Union

a) Shall take action, within the limitations imposed upon it by the International Conferences of American States or pursuant to the specific direction of the Meetings of Ministers of Foreign Affairs, on every matter that affects the effective functioning of the Inter-American System and the solidarity and general welfare of the American Republics:

American Republics;
b) Shall call the regular Meetings of Ministers of Foreign Affairs provided for in Paragraph 1 of Article 2 hereof, and special meetings, when they are requested, to consider exclusively emergency questions. In the latter case the call shall be made upon the vote of an absolute majority of the Board;

c) Shall supervise the inter-American agencies which are, or may become related to the Pan-American Union, and shall receive and

approve annual or special reports from these agencies.

- 5. The creation of an inter-American Economic and Social Council to replace the emergency organ known as the Inter-American Financial and Economic Advisory Committee, functioning in the Pan-American Union. This Council has been given a wide range of powers in the economic and social field. It is to be provisionally organized by the Governing Board of the Pan-American Union, which is to supervise its activities. The Ninth International Conference of American States will provide the permanent organization of this body.
- 6. Election of the Chairman of the Governing Board, as well as the Director General and the Assistant Director. The Chairman is to be elected annually and shall not be eligible for reëlection for the term immediately following. The Board is to meet once a week instead of once a month. The Director General and the Assistant Director are to be chosen by the Governing Board for a term of ten years. Neither is eligible for reëlection; neither can be succeeded by a person of the same nationality. The first term for the Director General will begin on January 1, 1955, and for the Assistant Director on January 1, 1960. This five-year difference in the appointments of the two highest officials of the Pan-American Union is stipulated for the purpose of providing continuity in the internal administration of the institution.

OTHER ACCOMPLISHMENTS OF THE CONFERENCE

The two steps outlined in the preceding paragraphs are regarded as the most outstanding achievements of the Conference of Chapultepec. They are not, by far, the only constructive measures adopted. An examination of the Final Act shows a number of resolutions and declarations highly sig-

nificant in the economic and social fields. Economic and social matters were uppermost in the minds of the delegates because some of the most pressing problems in the countries they represented ran along these lines. The domestic economies of all these countries had been closely geared to the war effort and to meet postwar reconversion problems without dislocating such economies required urgent and drastic action.

The importance attached to these subjects is emphasized by the fact that the agenda was chiefly economic; out of six Committees among which the work of the Conference was divided, two were exclusively devoted to economic and social subjects. The Fourth Committee considered "Postwar Economic and Social Problems," and the Fifth "Economic Problems of the War and Transition Period."

Out of these two Committees came several resolutions providing for a series of cooperative measures in the economic and social fields of which the chief are briefly stated as follows:

- 1. Intensification of efforts to mobilize all economic resources in order to achieve victory at the earliest moment and at the least possible cost in human life (Resolution XIV);
- 2. Adoption of a number of principles relating to the application of wartime price controls (Resolution XV);
- 3. Elimination as rapidly as possible of special controls imposed on international trade because of war conditions (Resolution XX);
- 4. Agreement for the economic adjustment of the hemisphere during the transition period. A procedure is adopted to be followed by the American countries in order to minimize the consequences to their economies as a result of reductions in the procurement of certain basic products and strategic materials during the period of transition (Resolution XXI);
- 5. Improvement of public health, nutrition and food supplies in order to insure economic stability, raise the standards of living and increase productivity of the American republics (Resolution XLV);
- 6. Sale and distribution of basic primary products to dispose of heavy surpluses accumulated during the war (Resolution XLVI);
- 7. Development and efficient and integrated use of inter-American transportation facilities (Resolution XLVIII);
- 8. Establishment of new branches of industry in the American republics and improvement and enlargement of those now in existence, development and exploitation of natural resources, and extension of facilities for the free movement of capital as well as extension of long term credits, for the purpose of raising the standard of living of the American peoples, deriving maximum benefit from their natural and human resources, and enlarging their international trade (Resolution L);
- 9. Adoption of a long-range program for the attainment of certain fundamental aims to increase collaboration in the war effort and ensure an orderly

transition from wartime to peacetime economy, and establishment of guiding principles for the attainment of these objectives (Resolution LI).

This resolution, entitled "Economic Charter of the Americas," created special interest during the Conference and was looked upon as one of the principal achievements. Its provisions to be effective, however, need to be implemented by each country.

10. Declaration of the social principles of the Americas. Contains recommendations for the adoption in all the American republics of social legislation to protect the working population and to furnish guarantees and rights to the working man (Resolution LVIII).

THE ARGENTINE QUESTION

In the political field the Conference had before it, as the last topic on the agenda, the so-called Argentine question. This was one of the major problems at Mexico, the main preoccupation of the delegates throughout the Conference and a daily subject of comment and conjecture in the press. Everyone was anxious to see this question settled in a manner satisfactory to all concerned.

After many days of discussion and exchange of views the heads of delegations finally agreed on a formula in the form of a resolution, which was approved unanimously by the Conference.

In this resolution the Conference, after deploring the fact that the Argentine Republic had not up to that time found it possible to take the steps that would permit its participation in the meeting, expressed the hope that the Argentine nation would "coöperate with the other American nations, identifying itself with the common policy these nations are pursuing, and orient its own policy so that it might achieve its incorporation into the United Nations as a signatory to the Joint Declaration entered into by them." At the same time the Final Act of the Conference was open to adherence by the Argentine nation.

Reacting favorably to the friendly tone of the resolution, the Government of Argentina accepted the invitation extended by the twenty American Republics that participated in the Conference and adhered to the Final Act; declared war against the Axis powers, and agreed to take immediately all emergency measures incident to the state of belligerence, as well as those that may be necessary to prevent and repress activities that may endanger the war effort of the United Nations or threaten the peace, welfare or security of the American nations.

The decree enacted by the Argentine Government to give legal effect to the measures just indicated contains the following statements:

The Argentine Republic has always collaborated with the American states in all action tending to unite the peoples of the continent; this traditional policy of generations of Argentines from the early days of our independence has been inspired by a sentiment of true and effective Americanism, a consequence of the injunctions of the noble principles that have always regulated our international life, manifested and proclaimed by the Argentine Republic in Pan-American conferences, incorporated in numerous laws, reflected in the work of the Pan-American Union, and put into effect with disinterested effort:

In view of the unanimous gesture of the sister nations that attended the Mexico City Conference, the Government of the nation, animated by the highest ideals of Continental solidarity, the guiding principle of our international policy cannot remain indifferent, in view of the

elevated spirit of American confraternity; . . '.

The Government of the nation, pursuant to its tradition of American solidarity, proposes once again to unify its policy with the common policy of the other states of the Continent in order to occupy the place that corresponds to it and to share the responsibilities that may devolve upon it.

In this manner a difficult problem in inter-American relations was finally settled in a friendly and satisfactory manner.

The actions described above represent the outstanding accomplishments of the Mexico Conference. Several other resolutions and recommendations were also of considerable importance, but are omitted here because of limitations of space. There is one, however, which is counted among the most significant pronouncements of Mexico and deserves special mention. It is the "Declaration of Mexico." This Declaration contains seventeen principles which the American nations agreed to maintain as essential in their relations.

The Conference of Mexico was held in an atmosphere of tenseness, because of the circumstances under which it met. Many of the problems facing the American nations were critical. The peoples of the Americas expected great things of that meeting, and the delegates, fully conscious of these legitimate expectations, went to the Conference deeply resolved to do something tangible and constructive. As a result a spirit of cooperation and a unity of purpose prevailed which were never before so evident in inter-American conferences.

The meeting of Mexico truly signalizes a milestone in the history of the inter-American system. In the words of the United States Secretary of State, Mr. Edward R. Stettinius, Jr., the Conference marked "an historical turning point in the development of inter-American coöperation for peace and security from aggression and for the advancement of the standards of living for all the American peoples."

THE LEGAL STATUS OF GERMANY ACCORDING TO THE DECLARATION OF BERLIN

By Hans Kelsen
University of California

Ι

According to the Declaration made at Berlin on June 5, 1945, by the Governments of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom, and the Provisional Government of the French Republic, these Governments have assumed "supreme authority with respect to Germany including all the powers possessed by the German Government, the high command, and any state, municipal, or local government or authority." This means that the German territory, together with the population residing on it, has been placed under the sovereignty of the four powers. It means further that the legal status of Germany is not that of "belligerent occupation" in accordance with the Articles 42 to 56 of the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land of 1907. After Germany's unconditional surrender and especially after the abolition of the last German Government, the Government of Grand Admiral Doenitz, the status of belligerent occupation has This status presupposes that a state of war still exists become impossible. in the relationship between the occupant state and the state whose territory is under belligerent occupation. This condition implies the continued existence of the state whose territory is occupied and, consequently, the continued existence of its government recognized as the legitimate bearer of the sovereignty of the occupied state. This is the reason why it is generally assumed that belligerent occupation does not confer upon the occupant power sovereignty over the occupied territory. By belligerent occupation the legitimate government is made incapable of exercising its authority and is only substituted for the period of occupation by the authority of the occu-The legitimate government of the occupied state, especially the head of the state, may be expelled from the occupied territory and may have established his seat on the territory of an ally; the government, and especially the head of the occupied state, may even be made prisoners of war. But the government must continue to exist and must be recognized as such by the occupant power. The latter must be willing to conclude with this government a treaty of peace and to hand back to it the whole or a part of the occupied territory.

It can hardly be doubted that Germany, after the unconditional surrender of her armed forces, did not fulfill the conditions essential to belligerent occupation. For the legitimate Government of Germany had ceased to exist. The unconditional surrender signed by the representatives of the last legitimate Government of Germany may be interpreted as a transfer of Germany's sovereignty to the victorious powers signatories to the surrender treaty. But even if Germany's unconditional surrender is not interpreted in this way, and even if it is assumed that the victorious powers, by accepting the signatures of the plenipotentiaries of the Doenitz Government on the document of surrender, have, at least indirectly and defacto, recognized this Government and allowed it to function as such for a certain time, it must be assumed that the victorious powers, by arresting Grand Admiral Doenitz and his staff, have abolished this Government. In the Declaration of Berlin it is expressly stated that "there is no central government or authority in Germany capable of accepting the responsibility for the maintenance of order, the administration of the country, and compliance with the requirements of the victorious powers." The existence of an independent government is an essential element of a state in the eyes of international law. By abolishing the last Government of Germany the victorious powers have destroyed the existence of Germany as a sovereign state. Since her unconditional surrender, at least since the abolishment of the Doenitz Government, Germany has ceased to exist as a state in the sense of international law. Germany having ceased to exist as a state, the status of war has been terminated, because such a status can exist only between belligerent states. Since Germany's surrender, at least since the abolition of the Doenitz Government, the Hague Regulations are not applicable, and the legal status of the territory occupied by the victorious powers cannot be that of belligerent occupation.

It can easily be shown that this status, even if possible, would not be de-It is generally deemed to be beyond the competence conferred upon the occupant power by the Hague Regulations to engage in changes in regard to fundamental institutions. An occupant may not transform a democratic republic into an absolute monarchy or a fascist dictatorship into a democracy. The occupant, it is true, may alter certain political laws, but only in so far as this is necessary for its military purposes. Art. 43 of the Hague Regulations expressly stipulates that the occupant is obliged to respect "unless absolutely prevented, the laws in force in the country." It is generally accepted that the occupant has no right to divide the country into new administrative districts for political purposes, and certainly not the right to make territorial changes such as the transfer of parts of the territory to other There can be little doubt that the status of belligerent occupation would not be compatible with the intention of the victorious powers to reorganize Germany politically as well as economically and to reduce her territory in favor of her neighbors. All this, of course, could be achieved by a treaty concluded with the legitimate Government of Germany. Such a treaty, however, is, at least for the time being, impossible since no legitimate government of Germany exists. If later on the victorious powers allow a national German Government to be established, it will certainly not be advisable to burden this new and, as we hope, democratic government with the political

responsibility for all the hard measures which it will be necessary to enforce upon Germany. It is well known that the political responsibility for the Treaty of Versailles was a main cause for the breakdown of the Weimar Republic and the rise of national socialism.

İI

Since the German territory together with its population has been placed under the sovereignty of the occupant states, the whole legislative and executive power formally exercised by the German Government has been taken over without any restriction by the governments of the occupant states. The Declaration of Berlin, it is true, states expressly that the supreme authority with respect to Germany has been assumed for certain purposes and that it "does not effect the annexation of Germany." The purposes for which "supreme authority with respect to Germany" has been assumed are determined by the Declaration as follows: "to make provision for the cessation of any further hostilities on the part of the German armed forces, for the maintenance of order in Germany, and for the administration of the country." "Further hostilities on the part of the German armed forces" are practically impossible. The Declaration of Berlin expressly states: "The German armed forces on land, at sea, and in the air have been completely defeated and have surrendered unconditionally and Germany, which bears responsibility for the war, is no longer capable of resisting the will of the victorious powers." This means that a so-called deballatio of Germany has taken place, which is the essential condition of "assuming supreme authority with respect to Germany including all the powers possessed by the German Government, the high command, and any state, municipal, or local government or authority," that is to say, of placing the German territory together with its population under the sovereignty of the occupant powers. The purpose of making further hostilities on the part of the German armed forces impossible has already been achieved, so that the main purposes for which the occupant powers have assumed supreme authority, with respect to Germany are the maintenance of order and the administration of the country. These are the normal functions of a government. There is no restriction of sovereignty with respect to the purposes for which the "supreme authority" assumed by the occupant powers shall be exercised. But the assumption of the supreme authority does not, according to the Declaration, "effect annexation of Germany."

This seems to be not quite in conformity with the traditional doctrine according to which the establishment of the sovereignty of the conqueror over the conquered territory is possible only by subjugation; and "subjugation takes place only when a belligerent, after having annihilated the forces and conquered the territory of his adversary, destroyed his existence by annexing the conquered territory." The only way to destroy the existence of

¹ L. Oppenheim, International Law, 1940 (6th ed.), Vol. II, p. 467.

the enemy as a sovereign state seems to be, according to this doctrine, annexation of his territory; and annexation means incorporation of the territory into the domain of the conqueror with the latter's intention and capacity to hold it permanently. As the victorious powers expressly declare that they do not have the intention of annexing Germany, there is—according to this doctrine—no "subjugation" of Germany and consequently no sovereignty of the occupant powers over the occupied territory. This doctrine, however, is untenable. Germany certainly has ceased to exist as a sovereign state and, since the territory is not under Germany's own sovereignty, it would be no state's land if it were not under the sovereignty of the occupant powers. consider a territory which, after the abolition of the legitimate government and the destruction of its armed forces, is placed under the military government and administration of one or several victorious powers as no state's land, would be simply absurd. It is not true that the existence of the enemy as a sovereign state can be destroyed and its territory placed under the sovereignty of the conqueror only by the latter annexing the territory, in the sense of permanent incorporation. The existence of a state is destroyed by its adversary when the latter has not only annihilated the armed forces but also abolished the government of the former. The establishment of territorial sovereignty does not depend on the new sovereign's intention to hold the territory for good. He may have the intention to cede the territory or part of it later on to another state. Such an intention does not prevent the acquisition of sovereignty. The establishment of sovereignty over conquered territory depends exclusively upon the capacity of the conqueror to hold the territory acquired by conquest, on the firm possession of the territory, based on the fact that any possible resistance of the enemy has been overcome, his armed forces being completely annihilated. If there is a difference at all between formal annexation and placing the territory under the conqueror's sovereignty without the latter's intention to hold it permanently, it is rather a political than a legal one. The rights and duties of the territorial sovereign are the same in both cases. If a belligerent does not intend to destroy the existence of his adversary as a state in the sense of international law, he must If he does so, and at the same time does not not abolish its government. intend to let the territory become no state's land open to occupation by any other state, he must establish his own sovereignty over the territory. true that the conqueror can not be transformed into the territorial sovereign without or against his own will. But the declaration that the occupant powers "assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the high command, and any state, municipal, or local government or authority" is equivalent to the declaration that the occupant powers place the German territory under their sovereignty. This results clearly from the fact that the occupant powers declare that they "will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at

present being part of German territory." The occupant powers intend to determine the future boundaries of Germany not by a peace treaty concluded with a German Government but by a unilateral act of the occupant powers. Only the territorial sovereign has the power to dispose of the territory. Whether the term "sovereignty" is used or not, is of no importance. What counts is whether the fact has been established; and it is established when the conqueror assumes "supreme authority," that is to say unrestricted power, over the conquered territory and its population. It is even more correct not to use the term "sovereignty" because this is one of the most problematic terms in international law; as a matter of fact it has lost any precise meaning.

To place a conquered territory under the sovereignty, that is, under the unrestricted sovereignty, of the conqueror does not necessarily imply that the Constitution of the occupant state and its laws automatically extend to the occupied territory or that the inhabitants of this territory automatically acquire the citizenship of the occupant state. The occupant power may place the occupied territory and its population under special laws issued by the military government in its capacity as legislator. The military government established by the occupant power may allow that certain laws which were in force prior to the occupation remain in force during the occupation; but the reason of their validity is no longer the constitution of the country in force prior to the occupation but the express or tacit reception by the military government of these laws into the legal order of the occupied country. The persons who were citizens of the state which has ceased to exist since its territory has been placed under the sovereignty of the occupant power, become "subjects" of the occupant state in so far as

² After the Spanish-American War Cuba was occupied by and placed under the sovereignty of the United States without being annexed by the latter. The case of Cuba differs however from that of Germany: 1. The occupation of Cuba took place in accordance with a treaty concluded between Spain and the United States, the Treaty of Paris of December 10, 1898; 2. The exercise of the United States' sovereignty over Cuba was restricted to a definite purpose, the pacification of the island. The fourth point of the joint resolution of both houses of Congress of April-20, 1898, runs as follows: "that the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people." This declaration was incorporated in the ultimatum forwarded to Spain. The Supreme Court characterized the relationship. between the United States and Cuba by declaring that the island "is territory held in trust' for the inhabitants of Cuba to whom it rightfully belongs." (Neeley v. Henkel, 180 U. S. 109, 120). This is a political rather than a legal definition of the status of Cuba. According to international law a territory "belongs" to a state, not to a people, that is to say, only a state, not a people, can be the territorial sovereign. During the occupation by the United States, Cuba was certainly not a sovereign state, neither was it no state's land. The only state under whose sovereignty the island could be, and actually was, placed was the United States; the self-imposed restriction, whether called trusteeship or otherwise, was of no legal importance for the status of Cuba from the point of view of international law.

they are subjected to the laws issued by the military government. "citizenship" depends on the rights conferred and the duties imposed upon them by the military government. For "citizenship" is a legal status determined by the specific rights and duties of which this status is the condition. Citizen of a state (in contradistinction to mere "subject") is he who has political rights in, the duty of military service for, and the diplomatic protection abroad by the state concerned. Since the occupant state does not intend to "annex" the occupied territory placed under its sovereignty, it will not confer upon the former citizens of the occupied state political rights with respect to its own legislative or executive organs, nor will the occupant state impose upon them military duties. Consequently they are not to be considered as "citizens" of the occupant state. But they may have political rights with respect to their local governments instituted or permitted to continue by the military government. Hence, they may be considered to be "citizens" of the occupied country, although not citizens of the occupant If abroad, they are under the diplomatic protection of the occupant state, since their former state has ceased to exist and consequently has no diplomatic representation abroad. This presupposes that the other states have recognized the fact that the occupant power has placed the occupied territory under its sovereignty. Such recognition is indispensable if the occupation should last any considerable length of time.

Ш

The sovereignty under which the German territory, together with its population, has been placed is the joined sovereignty of the occupant powers. The Declaration of Berlin stipulates that "in matters affecting Germany as a whole," the supreme authority assumed by the occupant powers with respect to Germany will be exercised "jointly," "on instructions from their governments" by the Soviet, British, United States, and French commanders in chief; in all other matters by each commander in chief in his "The four commanders in chief will together conown zone of occupation. stitute the control council. Each commander in chief will be assisted by a political adviser.—The control council, whose decisions shall be unanimous, will ensure appropriate uniformity of action by the commanders in chief in their respective zones of occupation and will reach agreed decisions on the chief questions affecting Germany as a whole. Under the control council there will be a permanent coördinating committee composed of one representative of each of the four commanders in chief and a control staff organized" in several divisions, such as military, naval, air, transport, political, economic, finance, internal affairs, legal affairs, etc.

If two or more states exercise jointly their sovereignty over a certain territory, we speak of a *condominium*. Well-known cases of *condominium* are: the condominium of Austria and Prussia over Schleswig-Holstein and Lauenburg from 1864 to 1866; the condominium of Great Britain and Egypt over

the Sudan since 1898; the condominium of Great Britain and France over the New Hebrides since 1914; the condominium of Austria and Hungary over Bosnia and Hercegovina from 1909 to 1918.

It is important to note that a condominium may be established as a provisional measure with the intention of later on settling definitively the status of the territory. This was the case of the territory of Memel which, according to Art. 99 of the Treaty of Versailles, and the territory of Fiume which, according to Arts. 53 and 74 of the Treaty of Trianon, were placed under the joined sovereignty of the Allied and Associated Powers until final settlement regarding these territories have been made. These cases show clearly that a state can place a territory under its sovereignty without "annexing" it, that is to say, without the intention of permanent acquisition.

"The condominium may be exercised by agencies which have the character of common organs of the participating states, appointed on the basis of an agreement between these states, or by division of the territory into several districts, each of which is placed under the relatively independent administration of one of these states. But in the latter case, a common organ must also exist to decide certain general questions concerning the whole territory such as disposition of the territory and the final settlement of its legal status, especially the reëstablishment of the territory as an independent state." By the Declaration of Berlin the German territory is "divided into four zones, one to be allotted to each power." The abovementioned "control council," the "permanent coördinating committee" and the "control staff" are the common organs through which the occupant powers exercise their joint sovereignty, that is to say, their condominium.

"It is a consequence of the status of condominium that none of the several occupying powers is entitled to dispose unilaterally of the territory which is under his occupation and that any essential change is possible only on the basis of a decision adopted by all the powers exercising the condominium or by their common organ." ⁵

IV

The occupant powers, being the territorial sovereigns, need not, and cannot, conclude a peace treaty with a national German government, since such a government does not exist and since the state of peace has been de facto achieved by Germany's disappearance as a sovereign state. But a formal proclamation of peace by a unilateral declaration of the occupant powers is possible and even advisable. It is also possible and advisable to make the

² See L. Oppenheim, International Law, 1937 (5th ed.), Vol. I, pp. 352 f.

⁴ Quoted from writer's article "The International Legal Status of Germany to be Established Immediately upon Termination of the War," this JOURNAL, Vol 38, No. 4 (October 1944), p. 689.

^{*}Same, p. 693. The legal status of Germany as established by the Declaration of Berlin is about the same as suggested in the article mentioned above.

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recognition of the future national government of Germany dependent upon the latter's assumption by a treaty of certain obligations with respect to boundaries, disarmament, industrial organization, etc. Such a treaty would differ essentially from a peace treaty by which such obligations are usually imposed upon the vanquished state. A peace treaty legally constitutes the new situation of the vanquished state, and consequently charges its government that puts its signature under the peace instrument with the political responsibility for the arrangement. The treaty to be signed by the future German Government as a condition of its recognition would have a merely declaratory character as being only the confirmation of a situation which has been created legally by its predecessor: the military government exercising the condominium of the occupant powers.

The occupant powers, being the territorial sovereigns, are in possession of an unrestricted legislative competence within which their military governments may take any measure they deem necessary, including territorial changes. The unrestricted legislative power of the occupants is practically the only possibility of creating an adequate legal basis for the prosecution of German war criminals, which neither international law nor the existing municipal laws of Germany or of any of the United Nations provide.

The Control Council established by the Declaration of Berlin in its capacity as the main agency of the condominium over the former German territory is the proper authority to prosecute the German war criminals. eral international law obligates any state to punish its own war criminals. In prosecuting the German war criminals by a tribunal established by the Control Council the latter fulfills an obligation imposed upon it in its capacity as successor of the German Government. The situation of such condominium-tribunal would be analogous to that of the German Reichsgericht upon which, after the first World War, the prosecution of the German war criminals has been conferred. Since a condominium-tribunal may be composed of United States, British, Soviet, and French judges, it will certainly be more effective than the German Reichsgericht was. The Control Council, being the legitimate legislator of the territory and the population of the condominium, may issue the necessary legal rules to be applied by the tribunal. The latter need not necessarily be restricted to the prosecution of war criminals. Its jurisdiction may be extended to any crime for which the former German Government, the Nazi party, or any other organization in their services may be held responsible, even if the crime is not exactly a war crime in the usual sense of the term, such as certain atrocities, committed in no direct connection with war, by the Nazis against their own fellow-citizens.

Thanks to the declaration of Berlin, the legal status of the German war criminals is totally different from that of all the other war criminals. Whereas the prosecution of non-German war criminals will probably need an international agreement, at least in certain cases, the prosecution of

the German war criminals may be based on the legislative, judicial and executive powers of the *condominium*. No obstacle on the part of international law stands in the way of this prosecution. It is therefore advisable to separate it from that of the other war criminals.

The exercise of the legislative, judicial, and executive competence which the occupant powers possess in their capacity as territorial sovereigns implies, it is true, that they assume the political responsibility for all these measures. But it is only just that he who has the power should assume also the responsibility. No German puppet government should be allowed to operate under the control of the only true government, that is, the military government of the occupant powers. For any German government operating under the control of the occupant powers might be inclined to resort to sabotage. Hence it seems desirable to permit the establishment of a national government only when the occupant powers are ready to withdraw their armed forces from German territory and thus make possible the restoration of a sovereign German state.

EDITORIAL COMMENT

THE INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE AT MEXICO CITY AND THE PROBLEM OF THE REORGANIZATION OF THE INTER-AMERICAN SYSTEM

The Inter-American Conference on Problems of War and Peace which took place at Mexico City from February 21 to March 8, 1945, had on its agenda ¹ four great topics: coöperative measures for the prosecution of the war effort, social and economic problems, the Dumbarton Oaks Proposals, and the reorganization of the Inter-American System. The latter problem ² has two aspects: the reorganization as such and the problem of coördination with the proposed universal international organization. This comment will deal only with the first aspect of the reorganization problem.

The Mexico City Conference made far-reaching and sweeping decisions and proposals in this respect.³ Here arises a first, rather curious, legal problem: Had the Mexico Conference competence to act? In the Fall of 1944 Argentina had requested of the Chairman of the Governing Board of the Pan American Union (PAU) that a Meeting of Foreign Ministers of the American Republics be called "to consider the existing situation between the Argentine Republic and other American Republics." In his letter to the Governing Board of January 6, 1945,4 the United States Secretary of State "expressed the opinion of the Government of the United States that no action should be taken at this time by the Governing Board," because "the American Republics which are collaborating in the war effort are making arrangements by consultation through ordinary diplomatic channels to meet in the near future to discuss urgent war and post-war problems." Mexico invited to the Conference the governments "collaborating in the war." Argentina was not invited.

This procedure has been strongly attacked ⁷ and there can be no doubt that, from a juridical point of view, the Mexico City Conference was a

¹ Inter-American Conference on Problems of War and Peace, Mexico City, February, 1945, *Handbook for the use of delegates*. Prepared by the Pan-American Union. 1945 (pp. 207, mimeographed).

² This topic was intrusted to the Third Commission (Alb. Lleras Camargo, Foreign Minister of Colombia, Chairman). See *Acta Final*, Pan American Union, 1945, pp. 127, mimeographed; and *Final Act*, P.A.U., Washington, 1945, pp. 121, printed.

Resolution IX, Final Act, pp. 44-48.

Department of State Bulletin, Vol. XII, No. 291 (January 21, 1945), p. 91.

⁵ The same, No. 290 (January 14, 1945), p. 61.

• El Salvador, originally not invited, later joined the Conference, after her de facto Government had been recognized.

⁷ Sumner Welles, in his article of January 24, 1945, speaks of "violating the Inter-American Agreement on Consultation and gravely weakening the PAU." Walter R. Sharp says that the present procedure of calling Consultative Meetings "may, at the worst, result in maneuvres like the calling of the Mexico City Conference, outside of the jurisdiction of the Pan-American System, in order to exclude one or more American Republics": Foreign Affairs, Vol. 23, No. 3 (April, 1945), p. 452.

purely diplomatic Conference of Allies, outside of the Inter-American System. It is, therefore, difficult to see the legal basis for its competence to deal with the reorganization of this System. But as Argentina, after a somewhat painful interlude, reëntered the scene and adhered to the Final Act, the original lack of competence was healed retroactively.

Although the future of Pan-America, which has gained real importance and vital strength only in the last one and a half decades, will depend primarily on increasing sound political and economic and cultural relations and foundations, problems of organization play, nevertheless, a great role in strengthening the system.

The problem of reorganization is urgent and vital. Contrary to the League of Nations, Pan-America has grown in a slow and leisurely manner, as was possible only under the very special conditions of the Western Hemisphere, and has grown pragmatically. To-this type of growth it owes a great deal of its success, its flexibility, its adaptability to changing conditions, the possibility of coordinating its expansion with the expanding needs of inter-American cooperation. But these virtues carry also their faults: the somewhat loose character of the "Union of American Republics," the lack of a treaty-basis, the prohibition of political activities to the Governing Board, and, in consequence, the development on two parallel, but, independent lines, of political and non-political activities.9 The development of the Consultative Meetings of the Foreign Ministers showed a tendency to obliterate the difference between these meetings and the general Conferences, a development that drew a warning from the Director General.¹⁰ Inter-American peace machinery grew complex, unwieldy, and inefficient.11 The machinery for the codification of international law 12 has grown so complicated that it admittedly blocks any further progress in this field. The insistence on absolute equality has led to the consequence that there are in the essentially non-bureaucratic Pan-American organs representatives of all the 21 Republics; but in these last years experiments have successfully been made with Pan-American organs composed only of a limited number of members,—who are, it is true, appointed by certain governments, but who do not represent them, but represent rather all of the 21 republics and

⁸ As provided by Resolution LIX (Final Act, pp. 107-108).

⁶ "The organs (of political coöperation) are not an integral part of the PAU, but go, so to speak, parallel with it": Report of the Governing Board to the Lima Conference (Octava Conferencia Internacional Americana, Diario de Sesiones, Lima, 1939, pp. 129–132).

¹⁰ Report of the Director General on the Third Consultative Meeting, Washington, 1942, p. 20 and ff.

¹¹ Rather unsuccessful attempts at a reorganization of the Inter-American peace machinery have been made since the Buenos Aires Conference of 1936.

¹² Inter-American Agencies for the Codification, Unification and Uniformity of Law in the Americas, Washington, 1944 (pp. 23, mimeographed) and: General Report . . . on the Codification of International Law . . . , Washington, 1944 (34 pp., mimeographed). Handbook, pp. 53-56.

act in their name.¹³ An enormous number of Pan-American technical conferences ¹⁴ take place which are often only vaguely, if at all, related to the general conferences and the PAU.

The ease of creating, shifting, and abandoning Pan-American organs, ¹⁵ together with the creation of non-permanent organs in recent years, and their growing number and complexity, has led, in some cases, to an uncertainty as to what and how many Pan-American organs are functioning at any given time; it has sometimes led to confusion, duplication, vague definitions of competence, inadequate financial foundations, inefficiency, and an existence on paper only; it has led finally to a complete lack of interrelation, coördination, rationalization, integration, and centralization. The need for reorganization had been strongly felt in recent years. ¹⁶

The reorganization problems may be distinguished into fundamental,¹⁷ political, and technical problems. The political problems all stem from

¹³ Charles-G. Fenwick, "The Inter-American Juridical Committee at Rio de Janeiro," in this Journal, Vol. 37 (1943), pp. 5–29, and: Department of State Bulletin, Vol. XII, No. 294 (February 11, 1945), pp. 194–196; Carl B. Spaeth and William Sanders, "The Emergency Advisory Committee for Political Defense at Montevideo," this Journal, Vol. 38 (1944), pp. 218–241; Annual Report of (this) Committee, July, 1943, Montevideo (pp. 281, printed); Department of State Bulletin, Vol. XII, No. 289 (January 7, 1945), pp. 3–10.

14 The International Conferences of American States, 1st Supplement, 1933-1940, Washing-

ton, 1940, Appendix A, pp. 381–452.

The same, Appendix B, pp. 453-494, but which contains also non-official organs; John P. Humphrey, The Inter-American System: A Canadian View, Toronto, 1942. See also brief but excellent book by Margaret Ball: The Problem of Inter-American Organization, Stanford, 1944. Handbook, pp. 42-43.

¹⁶ The proposal of Ullóa (Peru) for a partially new organization in the sense of a centralisation of all non-political Inter-American organs in the PAU (Proceedings of the 8th American Scientific Congress, May 10-18, 1940, Washington, 1941, Vol. I, pp. 141-147. See further the proposals by the Executive Committee on Postwar Problems of the Governing Board: Pan American Postwar Organization. Washington, 1944 (pp. 71, printed). On pp. 31-71 of this publication is printed the Report and Project of March 6, 1944, on the Coordination of Inter-American Peace Agreements, made by the Inter-American Juridical Committee. Ball, work cited; Handbook, pp. 44-68.

17 Such as the problem of a treaty basis, the problem of the entry of Canada (P. E. Corbett, in Inter-American Quarterly, Vol. I (1939), pp. 30-34), and in Foreign Affairs, Vol. XIX (1941), pp. 778-789; Reginald G. Trotter, in Inter-American Quarterly, Vol. II (1940), pp. 5-10 and in Queen's Quarterly, Vol. III (1941), pp. 5-13. Chapters I and IX of Humphrey's book, cited in note 15. See Resolution XXII of the Mexico City Conference (Final Act, pp. 64-65), which paid a tribute to Canada's war effort and expressed the wish of ever closer collaboration between Canada and Pan America. Finally the problem of the relations between Pan America and what may be called Pan-American subregionalism (Central Americanism, River Plate Regional Economic Conference, Montevideo, January 27 to February 6, 1941). At the 3rd International Conference of the Caribbean (Port-au-Prince, Haiti, April 22-29, 1941) the observers from the United States and Colombia objected to the plan for an "Inter-American Union of the Caribbean" on the ground that it would involve an unnecessary duplication of the work of the PAU and would set a bad example to other regional groups which might lead to the fragmentation of Pan Americanism (A. P. Whitaker, Inter-American Affairs, 1941, New York, 1942, p. 59).

the overwhelmingly powerful position of this country and the long-felt¹⁸ Latin American wish to decrease constitutionally the preponderance of the United States in the PAU and its Governing Board. These Latin American wishes have now gained nearly complete and definite satisfaction.

Resolution IX, point 3 of the Final Act (March 8) reorganizes the Governing Board. It will be composed of one ad hoc delegate designated by each of the American Republics; these delegates are to have the rank of Ambassador and enjoy all the privileges and immunities thereof but are to be no part of diplomatic missions accredited to the United States. This arrangement was to be effective on May 1, 1945. According to point 5 the Chairman of the Governing Board will not be eligible for reelection during the period immediately following, so that the constant reelection of the American Secretary of State is made impossible and the chairmanship opened to Latin Americans. If we consider how strongly the United States was formerly opposed to the idea of setting up in Washington a special Pan-American diplomatic body, we can measure the change in attitude brought about by the "good neighbor" policy.

Point 5 also lays down, in accordance with another old Latin American wish, that the Director General and Assistant Director of the PAU shall hold office for ten years, but shall not be eligible for reelection and cannot be succeeded by a person of the same nationality. In recognition of the services of the actual functionaries, the first term for the Director will begin only on January 1, 1955, and for the Assistant Director on January 1, 1960.

The problem of political functions for the Governing Board has not been fully solved by the Mexico City Conference. Resolution IX, point 4-a, gives the Governing Board power to take action on every matter which may determine the effective functioning of the Inter-American System and the solidarity and well-being of the American Republics; by the potential inclusion of political activities it "constitutes a radical departure from previous policy" 20 but it restricts this competence by the phrase: "within the limitations imposed upon it by the International Conferences of American States."

Other political problems are not touched. Until very recently the Inter-American System looked primarily toward Inter-American peace. But in the last decade the Inter-American System took a new turn toward Inter-

¹⁸ See the proposals of Arévalo (Ecuador) in 1906 (Tercera Conferencia Internacional Americana, Rio de Janeiro, 1907, pp. 166-172); proposals by Alvarado Quirós (Costa Rica) in 1923 (Quinta Conferencia Internacional Americana, Actas de la Sesiones Plenarias, Santiago, 1923, Vol. I, pp. 484-492); the proposals of a Nicaraguan delegate in 1926 to transfer the PAU to Panama (Congreso Pan Americano Commemorativo del de Bolivar, Panama, 1297, pp. 208-211) and the Mexican proposals at the 6th Conference at Havana (1928) (Diario, pp. 194-5).

¹³ Report of the Delegates of the U. S. to the 5th International Conference of American States, Washington, 1924, p. 3 and ff.

²⁰ Dana G. Munro in Department of State Bulletin, Vol. XII, No. 301 (April 1, 1945), p. 528.

American solidarity and defense against extra-hemispheric dangers. The Mexico City Conference turned again to security of the American Republics inter se: the Act of Chapultepec, considered in Latin America as the outstanding political achievement of the Mexico City Conference, valid only for the duration of the war but recommending a post-war treaty to the same effect, "went further toward joint action for mutual defense than any previous agreement" and constitutes an approach toward Bolivarian ideas.

Another observation must be made at this point. Hitherto Pan-Americanism meant primarily the relations between this country and Latin America as a whole. In recent years a development on bilateral lines is manifest in the many agreements, concerning air and naval bases, strategic raw materials, economic relations, military cooperation, and so on, concluded between this country and single Latin American Republics. The activities of the PAU must be extended to a real cooperation between all the 21, and, therefore, between all the Latin American Republics inter se.

As to the technical reorganization problems, Resolution IX contains definitive as well as provisional measures, both in the field of political and of nonpolitical activities. Point 1 maintains the International Conferences of American States as the highest organ, formulating general Inter-American policy and determining the structure and function of Inter-American in-The Conferences are, from now on, to meet at struments and agencies. four-year intervals, the next (9th) to meet in Bogotá in 1946. distinguishes between ordinary and extraordinary Consultative Meetings. The latter shall be called (point 4-b) if voted by an absolute majority of the votes of the Board and have a competence restricted exclusively to the handling of emergency questions. The ordinary meetings are from now on to be held annually, except in years of general Conferences, the next one to They are to be called by the Governing Board and have be held in 1947. power to take decisions concerning the Inter-American System relating to problems of great urgency and importance and to situations and disputes of every kind which might disturb the peace of the American Republics. Foreign Ministers may be represented by special representatives only in The Consultative Meetings are, therefore, made regular exceptional cases. organs, with a clear-cut competence, and distinguished from the General Conferences.

Point 8 specifically maintains the Division of Intellectual Cooperation of the PAU.

Point 6 temporarily continues the functions of the Emergency Advisory Committee for Political Defense, of the Inter-American Juridical Committee and of the Inter-American Defense Board. Point 7 provides, in substitution for the present non-permanent Inter-American Financial and Economic Advisory Committee, a permanent Inter-American Economic and Social Council subsidiary to the Governing Board, composed of members designated

n Resolution VIII (Final Act, pp. 40-44).

⁼ Dana G. Munro, as cited, p. 526.

nated by the respective governments. The Council will be the coördinating agency for all official Inter-American economic and social activities. The Governing Board is authorized to organize the Council provisionally. Point 9 specifically provides the inclusion of the Inter-American Commission of Women "among the organs which form the PAU."

Resolution IV ²³ recommends that the governments consider as soon as possible the extablishment of a Permanent Military Organism. Resolution XLV ²⁴ provides for the continuation of the Pan-American Sanitary Bureau and for greater economic support and technical personnel for it. Resolutions XVII and XLIX ²⁵ deal with the preparations for the Inter-American Technical Economic Conference, convoked to meet in Washington on June 15, 1945. Resolution XXV, ²⁶ dealing with the reorganization of the codification agencies, recommends the adoption of the corresponding proposals made by the Inter-American Juridical Committee and recommends that this Committee be intrusted with the functions of a Central Codification Organism. Resolution XXXIX ²⁷ recommends the immediate elaboration by the Inter-American Juridical Committee of a preliminary project of an "Inter-American Peace System" and, later, the convocation of the International Conference of American Jurists by the Governing Board.

In addition to specific, permanent or temporary, measures and recommendations pro futuro Resolution IX gives the Governing Board a sweeping mandate to prepare a reform of the Inter-American System in capite et in The Board shall have (point 4-c) the function of supervising the Inter-American organs which are related with the PAU or which shall become related with it, and of receiving and approving annual and special reports of these organs. Point 9 charges the Board to prepare a project of a Charter for the improvement and strengthening of the Inter-American System, making use of all Inter-American agencies convenient for the purpose. This project is to contain, first, a "Declaration of Rights and Duties of States," recognized as the basic principles of the Inter-American System,28 and a "Declaration of the International Rights and Duties of Man," the text of the latter to be formulated by the Inter-American Juridical The project is, further (point 10), to provide for the strengthening of the Inter-American System by the creation of new organs or the elimination or adaptation of existing organs, dovetailing their functions between the several agencies and with the world organization. must also take care of the need for accelerating the consolidation and exten-

²² Final Act, pp. 36-37.

²⁴ Same, pp. 83-85.

^{*} Same, pp. 54-55 and 89-90.

[≈] Same, pp. 66-68.

²⁷ Same, pp. 78-79.

²⁶ See Resolution IX, point 9, 2nd paragraph. Executive Committee on Post-War Problems of the Governing Board, *The Basic Principles of the Inter-American System*, Washington, 1943 (pp. 40, printed).

sion of existing Inter-American peace instruments and a simplification and improvement of Inter-American peace organization. It must finally (point 12) provide for the establishment of an equitable system for the financial support of the PAU and of all its related organs—an extremely important and urgent point.

The Governing Board was instructed to start the work on this project on May 1, 1945 (point 9). The American governments are to send in all their proposals to the Governing Board prior to September 1, 1945 (point 11). The Board is to submit this project to all American governments prior to December 31, 1945 (point 9).

Definitive action on this project is to be taken by the Conference at Bogotá in 1946, which is not only specifically instructed to take decisions with regard to non-permanent organs (point 6) and to set up the permanent Inter-American Economic and Social Council (point 7) but also to "create or confirm the various organs of the Inter-American System" (point 6).

Resolution IX has, therefore, created a procedure and set a machinery in motion which makes it possible for the Bogotá Conference in 1946 to complete a total and definitive reorganization of the Inter-American System.

Josef L. Kunz

THE VITALITY OF INTERNATIONAL LAW

The members of the American Society of International Law resident in Washington were greatly privileged to hear Mr. Justice Robert H. Jackson of the United States Supreme Court stoutly affirm the vitality of international law at a meeting held on April 13, 1945. In his opening remarks he observed:

Few groups are likely to assemble today that would better know the short-comings of international law than this group. . . . You are aware of the confusions, of the incompleteness, of the lack of ordinary sanctions, and of all that might be said in criticism of international law. Yet here you are, assembled . . . to reiterate your inveterate belief that international law is an existing and indestructible reality and offers the only hopeful foundation for an organized community of nations. There is no paradox in this. Those who best know the deficiencies of international law are those who also know the diversity and permanence of its accomplishments and its indispensability to a world that plans to live in peace. I am happy to join you in a timely and resolute confession of faith.

Later on in this address Justice Jackson stated:

It seems to me that we now have an opportunity, not likely soon to recur, to bring international law out of the closet . . . and impress it upon the consciousness of the people. At no time have the materials of persuasion been more abundant or more compelling. I should not be greatly surprised if today the people are not actually less timid on the subject than those who should lead in this field. . . . The trouble has

been that the advocates of international law have had too little of what Mr. Justice Holmes called "fire in the belly," while the extreme nationalists have had too little else.

In another passage the Justice excoriates the deluded followers of John Austin:

Of course there is a school of cynics in the law schools, at the bar, and on the bench who will disagree, and many thoughtless people will see no reason why courts, just like other agencies, should not be weapons of policy: It is a current philosophy, with adherents and practitioners in this country, that law is anything that can muster the votes to put in legislation, or directive, or decision and backed up with a policeman's club. Law to those of this school has no foundation in nature, no necessary harmony with the higher principles of right and wrong. They hold that authority is all that makes law, and power is all that is necessary to authority. It is charitable to assume that such advocates of power as the sole source of law do not recognize the identity of their incipient authoritarianism with that which has reached its awful climax in Europe. . . . It is chiefly those who hold this idea of law who belittle international law because it lacks formal commitments of force to back up its precepts. This attitude, which considers itself a very practical one, I think misconceives the nature of law, the almost inevitable character of so many of its principles in a world ordered by any semblance of reason, and the influences which give it acceptance, vitality, and au-The fact that a principle of international law does not readily translate into a court mandate, with an executive power committed faithfully to execute it, does not mean that it may with impunity be violated.

This robust faith in the vitality of international law is most heartening and a needed rebuke to the views too commonly held, even when expressed within the editorial pages of this Journal. For the sake of clear thinking it is imperative that less stress should be laid on international legislation or the decisions of international organizations, and more stress laid on the great body of law that has arisen out of the usage of centuries. We need to remember that in time of peace this truly majestic system of law is normally applied without question between nations.

When international law is deficient it should be expanded by liberal interpretation or by the codification of certain branches, as in the case of the common law. But it would be a dangerous denial of the basic nature of the law of nations if those who are impatient with its slow development should resort to arbitrary legislation or compromise treaty agreements.

The vitality of international law lies in its organic origins and natural growth. It must not be hospitalized for medical treatment and surgical operations. It will continue to serve usefully its high purposes if respected and generously interpreted by such learned jurisconsults and valiant defenders as Justice Jackson.

PHILIP MARSHALL BROWN

THE CHAIRMANSHIP OF THE SAN FRANCISCO CONFERENCE

When Russian Foreign Secretary Molotov unexpectedly objected, at San Francisco, on April 26, to a motion proposing Edward R. Stettinius, Jr., United States Secretary of State, as Chairman of the Conference, many Americans were considerably disturbed. The Russian position, however, was not unreasonable in the circumstances, and there is ample precedent for the compromise solution finally adopted, namely, a rotation of the chairman-ship among the four sponsoring powers: Great Britain, China, Russia and the United States. This principle of rotation was retained, in form, even with respect to the chairmanship of the important Steering and Executive Committees, which was "delegated" to Mr. Stettinius by the three other presidents.

An examination of the public conferences of the last century reveals a well established usage according to which the presidency should go to the chief delegate of the country on whose soil the conference was held.³ Thus Prince Metternich presided over the Congress of Vienna (1815), Count Walewski the Conference of Paris (1856), and Bismarck the Berlin Conference (1878). Clemenceau was chairman of the Peace Conference of 1919 and declared, when he took office:

It is necessary, gentlemen, to point out that my election is due necessarily to the lofty international tradition, and to the time-honored courtesy shown toward the country which has the honor to welcome the peace conference at its capital.

Many similar precedents could be cited.⁵ In the twentieth century, if we except the conferences held under the auspices of the League of Nations, discussed below, the practice has been almost invariably followed. Thus Secretary of State Charles E. Hughes was chosen to preside over the Washington Conference on the Limitation of Armaments.⁶ According to the tradition of the Pan-American Conferences, too, the country serving as host to the conference supplies the president.⁷

- 1 The New York Times, April 27, 1945.
- ² "The meeting recommends that there be four presidents, who will preside in rotation at the plenary sessions. These four may meet from time to time with Mr. Stettinius presiding over these meetings and Mr. Stettinius to be chairman of the Executive and Steering Committees, the three others delegating full powers to Mr. Stettinius for conducting the business of the conference": Same, April 28, 1945.
- Frederick Sherwood Dunn, The Practics and Procedure of International Conferences, Baltimore, 1929, pp. 20, 208.
- 4 "The Paris Peace Conference," in International Conciliation, No. 139 (June, 1919), p. 30, quoted by Norman L. Hill, The Public International Conference, Palo Alto, 1929, p. 65.
- See Sir Ernest Satow, International Congresses, London, 1920, p. 62; Marcel Sibert, Quelques aspects, de l'organisation et de la technique des conférences internationales, in Recueil de l'Académie de Droit International de la Haye, Vol. 48 (1934-II), p. 416.
 - ⁶ Dunn, as cited, p. 208.
- ⁷ Vladimir D. Pastuhov, International Conferences and their Technique, Washington, 1944, p. 85 (mimeographed).

But there have been exceptions to this time-honored usage. pointed out, it was Roosevelt, not Stalin, who presided at Yalta. the country acting as host to the conference is not the inviting power it usually defers to the latter who then has the honor of furnishing the chair-Thus the presidency of both Hague Peace Conferences (1899 and 1907) was granted not to Dutch but to Russian statesmen. Logically, then, since there were four inviting or "sponsoring" powers at San Francisco, each had an equal right to the chairmanship. The system of rotation proposed by Molotov was actually adopted for the London Conference of 1912-1913 and employed again at the Lausanne Conference of 1922-1923, although it did not include the Turkish delegate. The latter was compensated by being made Secretary General.8 And while, as noted above, the presidency of the Versailles Peace Conference was given to France, four Vice-Presidents were chosen among the delegates of the great powers, named in alphabetical order.9

Nor should it be forgotten that the old usage of granting the presidency to the inviting power was often violated with respect to conferences called by the League of Nations or organized under its auspices. This was inevitable, for the "inviting power" was usually not a state but the League Council. The custom was evolved of choosing in advance a disinterested and competent person, preferably not connected with any national delegation, and presenting his name to the assembled conference for formal election. This system has a number of advantages. As the choice is carefully made, the competence and impartiality of the candidate can be carefully scrutinized. Valuable time ordinarily spent in the election of a president at the conference is thereby saved for more important matters. Furthermore, a president appointed beforehand has an opportunity to acquaint himself with the preparatory work and the agenda, and thus prepare himself to deal effectively with the problems when they arise at the meeting itself.

The Russian position is not only supported by precedent, but it has a solid rational basis. The country which furnishes the chairman certainly enjoys outstanding advantages which it would be fairer to distribute among several powers. The importance of the presidency is illustrated by a brief summary of his functions. "The president opens, suspends, and closes the meetings; he brings to the attention of the conference all communications of sufficient importance to justify their submission to the gathering. He watches over the observation of the rules of procedure, calls upon the speakers, pronounces the closing of discussions, puts questions to a vote, and announces the result of the vote." Furthermore, he may summarize or clarify statements of speakers or attempt to reconcile opposing viewpoints. He may receive deputations of bodies which have no official status at the conference, and he delivers the opening and closing addresses. The chairman likewise has certain social duties which are not without their importance.

⁸ Sibert, p. 417. Same, p. 419. Dunn, p. 208 ff. Pastuhov, p. 88.

From the foregoing it is evident that the Russian position on the presidency at San Francisco was by no means unprecedented, especially if we take into account the traditions of the League of Nations conferences, and seems reasonable as an effort to distribute the very substantial advantages of the chairmanship equally among four great powers, instead of leaving them to the one state which acts as host to the conference.

JOHN B. WHITTON

THE PROPOSED CONSTITUTIONAL AMENDMENT ON TREATY-MAKING

On May 1, 2, 7, 8, and 9, 1945, a debate occurred in the House of Representatives ¹ on the Resolution of the Chairman of the Judiciary Committee, Mr. Hatton Sumners, ² proposing a change in the United States Constitution by which the House was to participate in treaty-making and simple majorities of "those present" in House and Senate were to be substituted for the existing requirement of the "advice and consent" of two-thirds of the Senators present.³

The debate was spirited and attained a high level of statesmanship. The members who participated were well aware of the fact that the Senate would not be likely to take any action on the Resolution, even if passed, and that the House was promoting a somewhat selfish interest in demanding participation in what has heretofore been a Senate prerogative. But on the theory that the Senate had somehow used its constitutional power inadvisedly and had checked the beneficent aims of the Executive, the movement for a change had received impetus. The surprising feature of the debate is the amount of opposition which the proposal aroused among the membership, reaching such proportions that the Chairman, Mr. Sumners, felt himself obliged to abandon the original Committee Resolution without a vote, and to accept a substitute Resolution drafted by Representative Schwabe of Missouri proposing as necessary to "ratify" a treaty a majority of the membership of both Houses, 218 in the House and 49 in the Senate. As thus

¹ Congressional Record (daily), Vol. 91, May 1, 2, 7, 8, and 9, 1945, at pp. 4079, 4109, 4314, 1398, 4414.

² H. J. Res. 60, 79th Cong., 1st Sess.

³ The Resolution favorably reported by the Committee on the Judiciary is simply stated in these words:

Hereafter treaties shall be made by the President by and with the advice and consent of both Houses of Congress.

See H. Report No. 139, 79th Cong., 1st Sess., to accompany H. J. Res. 60 (February 13, 1945).

⁴ See Hearings before Subcommittee No. 3, House Committee on the Judiciary, 78th Cong., 2nd Sess., on the subject of an amendment to the Constitution relative to the making of treaties. See also H. R. Rep. No. 2061 (December 13, 1944).

This would mean that an absentee or non-voting member would be deemed to cast a negative vote. It is debatable whether majorities of the membership of each House would be easier to obtain than two-thirds of the Senators present.

amended, the Resolution was adopted on May 9, by a vote of 288 to 88, 56 members not voting.

There appeared to be widespread agreement among the members that the recent practice of using executive agreements as a substitute for treaties was a "subterfuge," 7 a "circumvention of the Constitution," 8 "bypassing" the Constitution or Senate, thus fortifying the objection to this practice raised not only by critics but by friends of the amendment, like The New York Times 10 and Professor Colegrove. 11 To the writer it seems inconceivable, in spite of the argument of Mr. McClure 12 and the case of United States v. Pink, 18 that anyone could seriously believe that the executive agreement and the treaty are interchangeable, that the President may submit to the legislature what he wishes, and that he may select the body at whose hands he prefers to seek approval, either Congress as a whole or the Senate. These two instruments, the treaty and the executive agreement in American constitutional practice vary in scope, in their function of conferring on Congress legislative power, in the necessity for ratification, in repealability, in their effect on a statute, in their status as "law of the land," in the Executive's power to modify or alter, them, in the necessity for "submission," in durability, and in the possibility of secrecy. Thus their supposed interchangeability seems more like a mirage, or wishful thinking. So tenuous is the argument for the alleged practical obsolescence of the Senate and the elevation of the executive agreement that it was not advanced by a single member of Congress in the debate of May, 1945.

What has happened in the way of Executive encroachment on the treaty-making power is graphically described in a table worked out by John Bassett Moore, a table which he has given me permission to use. It shows the num-

- ⁶ Congressional Record (daily), Vol. 91, May 9, 1945, at pp. 4440-41.
- ⁷ Mr. Gossett of Texas in same, May 1, 1945, at 4082.
- ^a Mr. Kefauver of Tennessee in same, May 2, 1945, at 4111; Mr. Wadsworth of New York in same, at 4134.
- ⁹ Mr. Baldwin of New York in same, at 4129; Mr. Robsion of Kentucky, same, May 9, 1945, at 4420. Said Mr. Celler of New York, another proponent of the amendment: "But such procedure [executive agreement] is not wise nor is it healthy." Same, May 2, 1945, at p. 4117.
 - 10 See editorial in this JOURNAL, Vol. 38, p. 639, note 9.
 - 11 Kenneth Colegrove, The American Senate and World Peace, New York, 1944, p. 31:

An executive agreement as a substitute for a treaty comes dangerously close to an evasion of the Constitution. The employment of this method would place the post-war pacts on a basis that lacks the traditional validity of treaty-law. It would leave an uncertainty in the minds of our allies who would find American commitments resting on an arrangement which is not expressly defined in the Constitution.

Mr. Colegrove concludes p. 110:

The use of executive agreements as a substitute for a peace settlement is a palpable evasion of the fundamental law. The Constitution is clear and unambiguous on the subject of treaties.

- ¹² Wallace McClure, International Executive Agreements, New York, 1941.
- 13 315 U.S. 203 (1942).

ber of recent treaties and executive agreements, tabulated according to year of publication:

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1939 10 26	3
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1941 15 39	
1942 6 52	3
1943 4 71	Ĺ
1944 7	Ł

While much of the recent increase in executive agreements is explainable under the war power, the following executive agreements—a few among many—cannot be thus explained: the Wheat Agreement, the Silver Agreement, the Aviation and Air Transport Agreements, Unemployment Insurance Benefits, the St. Lawrence Seaway Project, Agricultural Experimental Stations, Health and Sanitation, Finances of foreign countries. On the contrary, some of the traditional subjects for a treaty are: naturalization, establishment, extradition, consular privileges, peace and friendship, restoration of peace, alien ownership of realty, claims against the United States, guaranty of independence and neutrality, multilateral treaties, double taxation, exercise of fishing rights, and other matters.¹⁴

Representative Ludlow of Indiana pointed out in the debate that the twothirds Senate rule, however some of its original reasons may have changed, was designed to afford a check and balance against the vagaries of an Executive, ¹⁵ and that the substitution of the majority rule, when the President's Party is in control of both Houses, would, by the ability of the Executive to influence members of his Party by patronage and other devices, result in a loss by the Congress of one of its valuable functions. He showed how Postmaster General Farley boasts in his book of having used the telephone, on behalf of the Administration, to defeat by a narrow vote the Ludlow Resolution calling for a popular referendum before Congress could declare war. ¹⁶ Others also emphasized that the Amendment—assuming both Houses to belong to the President's Party—would forfeit, not enhance, the power of

¹⁶ James A. Farley, Behind the Ballots, New York, 1938, pp. 361, 362.



¹⁴ See the subjects commonly cast in treaty form listed in the speech of Mr. Merrow of New Hampshire, *Congressional Record* (daily), Vol. 91, May 7, 1945, at p. 4320.

¹⁶ Congressional Record, (daily), Vol 1, May 1, 1945, at p. 4099.

Congress to act as an effective check.¹⁷ Some members observed that if the President's Party did not control one or both of the Houses, the vote on the President's treaties might become more political than ever.¹⁸ Representative Springer suggested that if the House desired to share the treaty-making power, the Resolution should be amended to permit two-thirds of the House to join two-thirds of the Senate.¹⁹ The compromise Resolution of Representative Schwabe was finally adopted.

Two arguments which to the writer seem conclusive in support of the present constitutional provision are (1) that a treaty is in effect a constitutional amendment, and (2) that a treaty can drain away and centralize all state powers, and therefore needs a decisive vote such as that afforded by the two-thirds rule.²⁰ If mere majorities could effect such fundamental changes in the American Government as the proposed amendment would make possible federal laws like the second Migratory Bird Act ³¹ and the legislation implementing the pending Anglo-American Petroleum Treaty ²² could be easily adopted and the states be gradually deprived of their power over many matters. Amendment by treaty could avoid all the hurdles which Article V of the Constitution provided for amendments, hurdles for which even the two-thirds rule may not be an altogether satisfactory alternative. Some gentlemen would even permit the Executive alone to accomplish these far-reaching changes.²³ An analysis of the constitutional possibilities at-

- ¹⁷ Mr. Robsion, for example, said that the resolution "adds greatly to the power of the President and proportionately weakens the power of Congress": Congressional Record (daily), Vol. 91, May 1, 1945, at 4119.
- ¹⁸ See, in debate, Mr. Baldwin (Congressional Record, May 2, 1945, at p. 4129), Mr. Springer (May 8, 1945, at p. 4399); Mr. Ludlow (May 1, 1945, at p. 4099); and Mr. Robsion (May 1, 1945, at 4119).
- ¹⁸ Representative Springer's Resolution to this effect was defeated by 103 votes to 61 (Congressional Record, May 9, 1945, at p. 4415).
- ²⁰ These two arguments seemed to impress the New York State Bar Association, which on February 17, 1945, voted "overwhelmingly" against the proposed Judiciary Committee Amendment, endorsed by the Association's own Committee on International Law, 11 votes to 2. The New York Times, February 18, 1945.
 - ²¹ Sustained in Missouri v. Holland, 252 U. S. 416 (1920).
- ²² This was originally to be an executive agreement. As such, it was signed August 8, 1944. Chairman Connally protested, after an opinion and a study of the subject by Mr. Henry S. Fraser to the effect that since it committed the United States to future legislative obligations, the agreement must take the form of a treaty. See Sen. Doc. No. 244, 78th Cong., 2nd Sess. (1944). On August 24, 1944, it was submitted to the Senate as a treaty. Senator Connally, after reading it, expressed the opinion that it would not receive a two-thirds vote. President Roosevelt on January 10, 1945, withdrew the treaty for renegotiation with Great Britain. When the industry heard about the Agreement they protested its substance, which proposed to centralize the administration of production and distribution of petroleum in the Federal Government. Both the Committee and the industry, after a hearing, proposed a redraft.
- ²² The fact that the cases of United States v. Belmont, 301 U. S. 324 (1937), and United States v. Pink, 315 U. S. 203 (1942), sustained the power of the President to change property

tending treaty "ratification" by mere majorities should convince the student that the two-thirds rule will not readily and should not lightly be changed by the Senate.

Representative Adams presented to the House a table in which he showed that of the several treaties defeated by the Senate only three would have been saved by the Schwabe Resolution providing for the necessity of absolute majorities of the membership. The outcome of the debate seems to have disappointed many proponents of the Sumners Resolution. It is, however, doubtful whether the original Resolution or the amended Resolution will command much support in the Senate or, if the Senate were convinced, whether three-quarters of the states would ratify. The House Resolution may, therefore, take its place among the 2200-odd constitutional amendments which have been unsuccessfully proposed.

EDWIN BORCHARD

THE UNITED NATIONS CHARTER

After nine weeks of discussion and debate fifty members of the United Nations signed a Charter at San Francisco on June 26 and thus brought to a close the United Nations Conference on International Organization which convened on April 25. In the invitation to the Conference issued by the sponsoring powers on March 5, 1945, it was suggested that the Proposals for the establishment of a General International Organization agreed upon by the representatives of the United States, the United Kingdom, the Soviet Union, and China, during conversations at Dumbarton Oaks, and made public on October 9, 1944, supplemented by the Yalta agreement of February 11, 1945, on voting procedure in the Security Council, should afford the basis for a Charter of the United Nations. It was not clear when the Conference convened at San Francisco to what extent the nations not parties to the Dumbarton Oaks proposals would be free to suggest changes in or additions to the basic document, but this situation was soon cleared up by an invitation from the sponsoring powers to all the members of the San Francisco Conference to submit by a certain date whatever amendments they wished to Most if not all of the members took advantage of this have considered. invitation and hundreds of amendments were proposed. They were dist tributed according to subject matter among four commissions and a dozen committees and the work of revising the Dumbarton Oaks Proposals began in earnest. The extent of the revision is indicated by a comparison of the length of the two documents. The Dumbarton Oaks Proposals comprise about 3,500 words. The completed Charter is more than double that

relations is one of the most convincing reasons why the Litvinoff Assignment may not have been correctly construed and why its extension is fraught with danger. See editorial, this JOURNAL, Vol. 38, p. 637.

[&]quot;Congressional Record (daily), Vol. 91, May 2, 1945, at p. 4118.

length, or approximately 10,000 words. Reference can be made here only to the principal differences between the two documents. Detailed comments will appear in later numbers of the JOURNAL.

The most unacceptable feature of the Dumbarton Oaks Proposals was their prospective of peace at any price for the small nations. References to the principles of international law and justice were conspicuous by their absence. Criticisms of this flagrant omission were general even before the nations convened at San Francisco, and among the first amendments offered at the Conference were a number to remedy it. The Preamble of the Charter, which is entirely new and is an inspiring statement of the reasons why the nations should remain united, declares that the peoples of the United Nations are determined "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." In its statement of purposes and principles, the Charter provides that the adjustment or settlement of international disputes or situations which might lead to a breach of the peace shall be made "in conformity with the principles of justice and international law" and finally, the General Assembly is specifically authorized to initiate studies and make recommendations for the purpose, among others, of "encouraging the progressive development of international law and its codification."

The provisions of the Proposals throughout have been carefully rewritten and clarified. The chapter on membership has been expanded from one to four articles and now includes provisions for suspension and expulsion. The functions and powers of the General Assembly, in which all members are represented and vote on terms of equality, have been somewhat enlarged in keeping with its position as a principal organ of the United Nations. An added article confers upon the General Assembly the right to "discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs" and "to make recommendations to the members of the United Nations or to the Security Council or to both on any such questions or matters" except when the Security Council may be exercising its functions with respect to them.

Less change has been made in the chapters dealing with the Security Council than in other parts of the Proposals. A provision has been inserted that in the election of the non-permanent members of the Security Council by the General Assembly due regard shall be "specially paid, in the first instance to the contribution of members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution." The voting procedure, and particularly the veto power of the permanent members of the Security Council as provided in the Yalta formula of the Big Three, was the subject of extended and at times heated debate at San Francisco. The ambiguities and paradoxes of interpretation respecting the veto became so numerous and complex that the sponsoring governments invited the other

delegations to submit a list of questions respecting the exercise of the veto. In response to this suggestion, twenty-three questions were submitted on May 22, which the delegations of the United States, Great Britain, Soviet Russia, and China answered in a joint statement on June 7. A summary of the reply released to the press states that:

The agreement reached preserves the principle of the unanimity of the permanent members of the Council in all actions taken by the Council, while at the same time assuring freedom of hearing and discussion in the Council before action is taken. We believe both are essential to the success of the World Organization.

Under the terms of the agreement, unanimity of the permanent members of the Council is required as provided by the Crimea Agreement in all decisions relating to enforcement action and—except as to parties to disputes—in all decisions for peaceful settlement. But this requirement of unanimity does not apply to the right of any nation to bring a dispute before the Council as provided by Paragraph 2, Section A, Chapter VIII,¹ and no individual member of the Council can alone prevent a consideration and discussion by the Council of a dispute or situation thus brought to its attention.²

The integration of regional arrangements into the proposed Charter was another problem upon which the San Francisco Conference had to work long and hard before it was finally solved. The American States, at their Conference on Problems of War and Peace held at Mexico City in February and March before the San Francisco Conference, provided for the reorganization and strengthening of the Inter-American system, and in the Act of Chapultepec, signed on March 3, they declared "That every attack of a State against the integrity or the inviolability of the territory, or against the sovereignty or political independence of an American state, shall . . . be considered as an act of aggression against the other states which sign this In any case invasion by armed forces of one state into the territory of another trespassing boundaries established by treaty and demarcated in accordance therewith shall constitute an act of aggression." In such case, the American states agreed to consult among themselves upon the measures Neither the Dumbarton Oaks Proposals nor the United to be taken. Nations Charter contains a definition of aggression. A proposal to inserte such a definition at San Francisco was rejected. "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression" (Art. 39 of the Charter). The veto of any permanent member of the Council can prevent such a determination whether or not it be the accused party. The Dumbarton Oaks Proposals recognized regional arrangements for the maintenance of international peace and security pro-

¹This reference is to the Dumbarton Oaks Proposals. The corresponding provision of the San Francisco Charter is Art. 35.

² The texts of the questions and reply are printed in the *Department of State Bulletin* for June 10, 1945.

vided they were consistent with the purposes of the new organization, but a school of thought developed at San Francisco inimical to regional arrangements on the ground that they might weaken the prestige and authority of the world organization. British fears aroused by the new Arab league were partly responsible. The intervention of President Truman with a reassurance that he would negotiate a mutual aid treaty with the other American nations against aggression in accordance with the recommendation of the Act of Chapultepec cleared the atmosphere in San Francisco and resulted not only in the preservation of the effectiveness of regional agencies such as the inter-American system but greatly improved the Charter as a whole. The purposes of the organization were amended so that all members agree to refrain in their international relations not only from the threat or use of force in general but specifically "against the territorial integrity or political independence of any State," and a new article was added providing that:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security (Article 51).

Resort to regional agencies is also now recognized among the procedures by which members shall first of all seek the pacific settlement of their disputes, and the Security Council is called upon to encourage the pacific settlement of local disputes through regional agencies. The military staff committee of the Security Council is furthermore authorized to establish regional subcommittees after consultation with appropriate regional agencies.

The principal organs have been increased from four to six by elevating the Economic and Social Council to a more responsible position and by the addition of a Trusteeship Council. The single chapter of the Dumbarton Oaks Proposals on arrangements for international economic and social cooperation has been increased to two chapters, the second dealing more fully with the functions and powers of the Economic and Social Council. The development of friendly relations among nations proclaimed in the Dumbarton Oaks Proposals as an objective of international economic and social cooperation has been expanded in the Charter by the statement that such relations must be based upon respect for the principle of equal rights and self-determination of peoples. The United Nations are also pledged in the Charter to promote higher standards of living, full employment and conditions of economic and social progress and development, and not only to respect but to observe human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Dumbarton Oaks Proposals did not mention the subjects of mandates, colonies or areas to be conquered from the enemy. These lacunae were supplied at San Francisco. Chapter XI of the Charter contains a declaration that the administration of territories whose peoples have not yet attained a full measure of self-government shall be carried on in the interest of their inhabitants with a view to the progressive development of their free political institutions. Chapter XII sets up an international trusteeship system which, however, is dependent upon future voluntary agreements of the states in control of the territories in question. Chapter XIII establishes a Trusteeship Council and provides for its composition, functions, powers, and procedure.

The Dumbarton Oaks provisions concerning the Secretariat have been expanded in the Charter by two articles which seek to guarantee the independence of the Secretary General and his staff from any national governmental influences in derogation of their positions as international officials. A proposal to appoint four deputy secretaries-general was defeated on the ground that these officials in the League of Nations acted in the interests of the governments which appointed them rather than of the League. The Charter contains provisions not in the Dumbarton Oaks Proposals for the registration of treaties and for the conferring of privileges and immunities upon the organization and its representatives.

The procedure for amendment of the Charter has been modified so that amendments may be adopted by a vote of two-thirds of the members of the General Assembly. Ratification of amendments is required by a similar majority acting in accordance with the constitutional processes of the respective members. Notwithstanding a persistent attempt of the smaller nations to limit the veto of the great Powers upon amendments, the Charter provides that the two-thirds required for ratification must include all the permanent members of the Security Council. When thus adopted, amendments are binding upon all members of the United Nations.

It will be recalled that the Dumbarton Oaks Proposals provided that an International Court of Justice should be the principal judicial organ of the United Nations and that the Statute of the Court should be either the Statute of the present Permanent Court of International Justice or a new statute in the preparation of which the present Statute should be used as a basis. The latter alternative was finally adopted at San Francisco. The name of the court has been changed to The International Court of Justice. Its seat remains at The Hague and the method of nominating and electing judges and the Court's jurisdiction, including the giving of advisory opinions, are substantially the same as in the old Statute. The new Statute is an integral part of the United Nations Charter and all members of the United Nations are ipso facto parties to the new Statute. A separate comment upon the new Statute will be published later.

The Charter will come into force upon the deposit of ratifications with the

Government of the United States of America by the five permanent members of the Security Council, and by a majority of the other signatory states, that is, at the present time, of twenty-three smaller members in addition to the five Great Powers. An interim agreement signed simultaneously with the Charter establishes a preparatory commission for the purpose of making provisional arrangements for the first sessions of the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council, for the establishment of the Secretariat, and for convening the International Court of Justice. The commission consists of one representative of each government signatory to the Charter. The commission met in San Francisco on the day following the signature of the Charter but its seat An Executive Committee composed of the representatives of is in London. the governments on the Executive Committee of the San Francisco Conference may act for the commission when it is not in session.

GEORGE A. FINCH

THE UNITED NATIONS CHARTER AND THE COVENANT OF THE LEAGUE OF NATIONS

Now that the fundamental document of the new international organization has been signed it is possible to make a definite comparison between that instrument and the Covenant of the League of Nations as the latter document stood on 1 September, 1939,—and still stands today, for that matter. We are no longer compelled to rely upon a tentative draft and guesses as to what will be done with it, for it is highly improbable that the new Charter will be altered in the process of approval and ratification, although there is no express prohibition of reservations such as was inserted in Article I of the Covenant.

The reasons for making such a comparison are obvious. The new organization will depend for its character on several factors beside the text of its constitution—changing circumstances, the policies of peoples and of governments, and so on—but the seriousness of the effort bestowed upon the new document while it was being drafted justifies the student of international organization in taking it seriously also. A comparison of the new document with the League Covenant should show us whether we have progressed or fallen back in the past twenty-five years, and where, or how. Finally we may learn where the new organization is likely to succeed or fail, knowing the history of the League Covenant in action.¹

The most obvious difference between the Covenant and the Charter lies in the much greater length of the latter—111 articles as against 26; over

¹ For a comparison of the Charter and the Dumbarton Oaks Proposals see Editorial Comment above, p. 541, by George A. Finch. In the judgment of the present writer the Charter constitutes an enormous improvement on the Proposals, the improvement being traceable mainly to the influence of public opinion and the small states and their leaders at San Francisco as compared with the Great Powers and their advisers at Dumbarton Oaks.

This difference is traceable to the 10,000 words against less than 5,000. inclusion of one or two subjects in the Charter not treated in the Covenant (Regional Arrangements, e.g.) but rather to the more elaborate treatment in the Charter of subjects also present in the Covenant. In some cases 2 this fuller treatment seems to amount to plain verboseness, to the elaboration of the obvious, or mere pious exhortation; if these devices can produce more loyal and effective international cooperation the legal purist may well waive his prejudices, but loose language in such a document always leads to disagreements in its application. In addition, one is bound to recall the admonition which was formerly emphasized very frequently by students of political science and legal drafting, and which is still sound, against making a constitution into a detailed statute with obvious unfortunate consequences in all directions. At other points 3 the length of the document is traceable to much duplication and cross-reference, not entirely without value but somewhat pedantic none the less.

Before pushing this comparison any further it might be well to draw a conclusion on the general issue of what to do about the Charter and the answer there is perfectly simple: adopt it, ratify it, set to work under it, make the most of it, even without any illusions as to its perfection or, alas, concerning its perfectibility. As will appear, the document is amazingly good in many respects, in view of all the surrounding circumstances, and in any case there is no possibility of getting any better international constitution just now. The best way to prove the defective character of some features of the Charter, for that matter, is to let them reveal themselves in practice. On the other hand there is no justification for hysterical exaggeration of the excellence of the Charter or of the consequences of American participation or prompt participation and so on. The tactic of progress in international cooperation is far from a simple matter 4 and the childish extravagance of some partisans of international cooperation is not clearly helpful, in the net balance. On the other side of the picture the current demands or opposition of certain states to the more radical proposals for international organization do not necessarily mean that those states are in principle opposed to the latter as a whole but simply that they attach only a relative degree of importance to it under the circumstances of their own existence, a perfectly normal A measure of sanity is surely not too much to ask in this whole attitude. matter.

The general framework of the new organization resembles that provided in the Covenant quite closely, as was inevitable.⁵ The most striking dif-

^{&#}x27;See article by the present writer on this problem in the Journal of Comparative Legislation, Vol. XVII, Part I (February, 1935), at p. 260, and the very wise if brief treatment of the problem in Kelsen, H., Peace Through Law, 1944, pp. viii-ix.

⁶ See paper by present writer, "The League, A League, or What?" in McCormick, T.C.T., ed., Problems of the Post-War World, 1945, Chap. XIII.

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ferences involve the prominence given to the Economic and Social Council and the absence of special reference to the International Labor Organization. The former feature seems to be a clear gain; it was anticipated in the later days of the League 6 and has almost everything to commend it. The second difference may or may not be important; if the I.L.O. is maintained and given a place commensurate with its value among the special organizations coördinated with the new organization the natural and desirable end would be achieved; if the I.L.O. is outlawed on the theory that there can be no understanding or coöperation between employer and employee then the result would be very unfortunate.

In matters of detail comparison between Charter and Covenant may most profitably be made on the following points: (1) composition of the Security Council and voting procedure; (2) the position of the Assembly; (3) the Secretariat; (4) relations with other organizations; (5) protection of minorities; (6) dependencies; (7) treaty revision and international legislation; pacific settlement; (8) security; (9) withdrawal and expulsion or suspension; (10) amendments.

On the first point there is great similarity between Covenant and Charter, with improvement in the latter. The outcry against the limited veto of the Great Powers, reminiscent of the feature which ruined Polish constitutional life before the first Partition, and advocated chiefly by Russia, is thoroughly justified if judged against the progress made in international procedure in recent decades and what the peoples of America, Britain, and other countries would probably have been willing to accept and to make their politicians accept. But the solution actually adopted is a good step in advance of League Council procedure. Here as elsewhere the characteristically distorted reporting of the news by correspondents at San Francisco has not given a true picture of the situation.

Respecting the Assembly and Secretariat the provisions of the Charter seem to improve upon the Covenant noticeably though not to a revolutionary degree unless a large abandonment of the unanimity rule be so regarded. The effort to muzzle the Assembly failed and Art. 10 of the Charter might well have ended after its first seventeen words. Special items added concerning the Secretariat ⁷ should be very helpful also.

The provisions concerning relations with other organizations, even private organizations, constitute an enormous advance over Art. 24 of the Covenant, except for the lack of reference to the League and the Labor Organization. At the same time difficulties must be expected in carrying out this laudable program.

The technique of group minority protection practiced under the League

League document A.23.1939.

⁷ Art. 100, par. 2; Art. 101, par. 3.

⁸ Arts. 57-59, 63.

⁹ Art. 71.

though not mentioned in the Covenant is abandoned in favor of the more radical method of the bill of human rights in terms of the individual.¹⁰ This should constitute another great advance although that depends upon the success of the new venture. The shift is at once an abandonment of an historic institution before the new practice has been established and a bold and radical step forward in principle, a part of the great expansion of economic and social provisions in the Charter.

The section on international supervision of dependency administration in the Charter ¹¹ constitutes a striking advance over Art. 22 of the Covenant. A strained effort ¹² to tie up this matter with "international peace and security" mars the picture slightly but the treatment is so good on the whole—and in certain details ¹³—that little but commendation seems in order.

On the other hand the Charter is grossly lacking in provisions for international legislation and for revision of existing international instruments, somewhat more backward than the Covenant in this respect and far more backward than the constitutions of various other international organizations. Provision is made ¹⁴ for the examination of any "situation" likely to disturb international peace and security but the action which may be taken for curing the "situation" is merely that of recommendation or advice. This is characteristic of the whole Charter: any grant of legislative authority is studiously avoided. Now if the desired ends (peace, progress, and human welfare) can be achieved entirely by agreement and voluntary coöperation then this is not only harmless but positively beneficial; that this should turn out to be the case would be a miracle unparalleled in history.

The provisions for pacific settlement by the Council ¹⁵ are of the same character. Whether they constitute an improvement on the analogous articles of the Covenant, which were more fully developed in the direction of definitive and binding authority, remains to be seen. It is in this matter and the preceding that the Charter might be said to harbor organic political and juridical weaknesses.

The sanctions system of the Charter, on the contrary, goes much further than the Covenant in the direction of decisive power. The arrangements should be much more effective than those of the Covenant, with one important exception namely the removal of sanctions action by the Great Powers among themselves from the purview of the Charter or any other legal regulation, as a result of the veto. Of course, repressive action will be taken in case of aggression, veto or no veto (would the prospective victims or other interested states sit idly by?), but under the Charter this action would lack the character of community police action. Beyond this the possibility that four—or five or more—of the Great Powers might, by the possibility of their intervention, prevent aggression by another Great Power

¹² Arts. 73C, 76A, etc. ¹³ Arts. 86C, 87C. ¹⁴ Arts. 11, 14, 34. ¹⁵ Arts. 33-38.

¹⁰ Art. 55C. See also the repeated condemnation of any discrimination on grounds of "race, sex, language, or religion": (Arts. 1, 13, 55, 76, etc.).

¹² Arts. 73–91.

has been abandoned, without reason of history or principle, apparently, except the desire to escape such restraint, which is a flagrant retrogression in comparison with the League system. It is again characteristic of the Charter that great power is joined to great political discretion, is in spite of frequent references to international law in the Charter (not in the original Proposals), whereas the Covenant contained rather careful legal prescriptions without assured physical support. Again the Covenant pattern is unquestionably the more mature, as the art of government has been evolved through the ages, but perhaps there is an adequate explanation for the retrogression enshrined in the Charter; if nature is allowed to take its course practice under that document will in due time be formulated in legal rules by usage. Provisions for regional security systems in the Charter may be very good or very bad in effect, depending upon how they are utilized.

The treatment of the problem of acquisition and loss of membership in the new organization constitutes on the whole an advance over the Covenant. There is not much difference between the two with respect to entry or election (both contain unavoidable elements of political arbitrariness), and the Charter provisions (or lack of them) are in advance of the Covenant with regard to withdrawal, suspension (not in the Covenant) and expulsion. Failure to recognize any right of withdrawal is certainly strong doctrine; it is to be hoped that no states will hesitate to join on this account or will later, in the silence, try to invoke common-law international rules regarding termination of treaties, but it is almost certain that this is exactly what will happen.

Finally the new provision for amendments is more advanced than that of the Covenant, even allowing for the Great Power Veto (in the Covenant all members of the Council held a veto power). There is also a provision ¹⁸ for a general review of the Charter on vote of the Assembly (majority or two-thirds) which could conceivably be used to circumvent this veto (by substituting a whole new Charter).

Thus on the whole the Charter constitutes a considerable advance over the League Covenant with a few more or less critical points (pacific settlement; revision of treaties; definition of the "domestic" question 19) where it is backward by comparison. In a number of other very special matters such as treatment of non-members, 20 closer relations between Court and League, 21 validity of treaties, 22 the Charter is likewise more advanced than the Covenant. In at least one matter (equal validity of the versions of the Charter in different languages) 23 it is unquestionably and utterly absurd as the sequel will doubtless soon demonstrate; the Treaty of Versailles was

See the exception in Art. 94, par. 2, for those cases which reach the International Court of Justice.
 Preamble, Art. 13, etc.
 Art. 109.

¹⁹ Compare Art. 2 (7) of the Charter with Art. 15 (8) of the Covenant.

²⁰ Art. 2, par. 6. ²¹ Art. 92. ²² Arts. 102–103. ²³ Art. 111.

guilty of the same fatuous-error. In spite of its defects it should, however, as already suggested, be ratified and put into operation, and improved as time goes on.

PITMAN B. POTTER

HERBERT WRIGHT

1892-1945

On April 12, a few hours before President Roosevelt passed away, the American Society and Journal of International Law suffered a severe loss in the sudden and unexpected death of Herbert Wright, a member of long standing, an admired and respected colleague, and a faithful and valued collaborator. Only fifty-three years old when he died, Dr. Wright had been a member of the Society for twenty-four years, during many of which he had served on the Executive Council and on various committees. For the last ten years he was the Chairman of the Society's Committee on Publications of the Department of State and in that capacity he earned the gratitude of teachers and other members of the profession, as well as officers of the Department of State, for his effective work in urging the continuation. expansion, and improvement of the Department's publications program and in supporting that program and obtaining appropriations from Congress for that purpose. Dr. Wright was a constant contributor to the American Journal of International Law and in recognition of this service he was elected to the Board of Editors a year before he died.

He was born in Washington and educated at Georgetown and Catholic Universities. For some years he edited classical and international legal publications for the Carnegie Institution of Washington and later for the Carnegie Endowment for International Peace. He became an editor in the Department of State in 1918–1919 and again in 1929–1930. During the latter term of service he was editor of the Inter-American Conference on Conciliation and Arbitration, at Washington, in 1928–1929, the International Conference on the Safety of Life at Sea, in London, in 1929, the International Technical Consulting Commission on Radio Communications, at The Hague, in 1929, and the Naval Conference at London in 1930. From 1923 to 1930 Dr. Wright was Professor of Political Science at Georgetown University. He then became Professor of International Law and Head of the Department of Politics at the Catholic University of America which position he held at the time of his death.

He was a member of the International Commission between the United States and Latvia and was twice Secretary of the Conference of Teachers of International Law and Related Subjects. He was the author and editor of several works on the classics of international law and of biographical sketches of diplomats and statesmen in the *Dictionary of American Bi*-

ography. For several years he conducted weekly luncheon meetings of a group of political scientists and international lawyers in Washington for the discussion of current topics, which were largely attended. One of the last services he performed was a detailed comparison of the Dumbarton Oaks proposals for an international organization with the Covenant of the League of Nations, which was intended for eventual publication in the American Journal of International Law. It was published in preliminary form as a Senate document.

The death of Dr. Wright at this critical period of transition in international affairs is a severe loss not only to the American Society of International Law and its Journal but to the teaching profession and all others interested in the diffusion of knowledge concerning the promotion of better understanding of international relations and the orderly development of world affairs.

GEORGE A. FINCH Editor-in-Chief

CURRENT NOTES

INTER-AMERICAN LAWYERS MEET

President Oscar Davila I., of the Inter-American Bar Association, announces that its Fourth Conference will be held at Santiago, Chile, on October 20-29, 1945.

The Colegio de Abogados de Chile of which Dr. Davila is also President, will be the host association and its organizing committee for the Conference has been busily engaged in working out an interesting program for the meeting. This will include the following activities and functions:

PROGRAM

Thurs.	Oct. 18	10 A.M. Meeting of Executive Committee	
Fri.	19	10 A.M. Meeting of the Council	
Sat.	20	Registration of Delegates and presentation of Credentials	
Dav.		11 A.M. Official visit to his Excellency the President of	
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		the Republic and to the Supreme Court	
~		6 P.M. Ceremony in honor of don Andres Bello	
Sun.	21	11 A.M. Opening plenary session	
Mon.	22	9 A.M. and 3 P.M. Committee meetings (Round Tables)	
		3 P.M. Meeting of the Resolutions Committee	
Tues.	23	Committee meetings (Round Tables)	
$\mathbf{Wed}.$	24	Committee meetings (Round Tables)	
Thurs.	25	Committee meetings (Round Tables)	
.*		10 A.M. Meeting of the Council	
Fri.	2 6	9 A.M. to 12 M. Meeting of Resolutions Committee	
		10 A.M. Meeting of the Council	
	_	3 P.M. to 6 P.M. Meeting of Resolutions Committee	
Sat.	27	9 A.M. to 12 M. Meeting of Resolutions Committee	
		10 A.M. Meeting of the Council	
		3 P.M. Closing Plenary Session	
Sun.	28	Trip of Delegates to Valparaiso and Viña del Mar	
Mon.	29	Trip of Delegates to Valparaiso and Viña del Mar	
Tues.	30	10 A.M. Meeting of the Council	
The Conference will function through seventeen Committees or Sections			

The Conference will function through seventeen Committees or Sections which have been assigned topics for discussion in part as follows:

Committee I — Immigration, Nationality and Naturalization

1) The need of developing a controlled immigration as an attribute to

¹ On the Nuro Conference of the I.A.B.A. see this JOURNAL, Vol. 38, No. 3 (October, 1944), p. 684.

sovereignty, which will assure a demographic unity in the face of the varied elements of colonization required by the different geographic conditions and climates in the countries of the Continent.

- 2) Distribution and compilation of legal provisions of the American countries tending to prevent or to solve the conflicts between nationality and personal status.
- 3) Suppression of impediments to international travel by the citizens of American nations. The identification ticket or card to be the only requirement for entering and leaving the national territory.

Committee II - Taxation

- 1) Taxation of business income.
- 2) Adaptation of tax legislation to actual income, without burdening the capital, eliminating the system of presumed income.
- 3) Judicial powers of Administrative Organs; procedures and appeals against their tax settlements and decisions.
- 4) Incentive taxation for international business, including prevention of a) discriminatory taxation; b) double taxation through means of reciprocal exemption of certain items of income, or the allowance of the credit for a tax paid at source against the tax paid at the fiscal domicile of the recipient; c) of extraterritorial taxation through agreement on appropriate rules of allocation.

Committee III—Administrative Law and Procedure

- 1) Administrative tribunals.
- 2) Execution of decisions of foreign tribunals.
- 3) Advantage of providing judicial review on the merits of the case.
- 4) Responsibility of the State.

Committee IV—Commercial Treaties and Customs Laws

Section A—Commercial Treaties

- 1) Inter-American economic cooperation on the basis of the preservation of the development of the natural industries of each American nation.
 - 2) Protection methods in Inter-American commerce.

Section B—Customs Laws

- 1) Pacts or agreements for continental customs unity.
- 2) Free zones and free ports.
- 3) Analytical study of the various American customs tariffs in order to fix and determine the amount of aid which the industrialists of each country receive from the State.
 - 4) Customs violations.
 - 5) Problems introduced by the customs regulations in freight contracts.

Committee V—National Centers of Legal Documentation and Bibliographical Indices of Law Materials

- 1) Advantage of cataloguing on cards the opinion of each decision rendered by the superior tribunals of each nation. Form and conditions to be included in this work.
- 2) Advantage of cataloguing on cards every law or regulation of general and permanent interest enacted in each country. Form and conditions to be included in this work.
- 3) Advantage of making uniform and simplifying the legal terminology to the point of formulating a Pan-American Legal Dictionary.
- 4) Advantage of cataloguing on cards articles in periodicals dealing with legal subjects. Form and conditions to be included in this work.
- 5) Advantage of cataloguing on cards the debates on legislation. Form and conditions which should be included in this work.

Committee VI-Comparative Constitutional Law

- 1) Study of the principles consecrated in the Constitutions of the American nations relative to the development of the Judicial Power. Criticism of the various systems of appointments of magistrates and judges. Influence which the rules which may be adopted on this point may have on the independence and permanency of the judiciary.
- 2) Study of the powers of the superior courts or tribunals of the American Republics to declare unconstitutional or inapplicable the law in a certain case because it is contrary to a precept of the Constitution; advantages and disadvantages offered by this system.
- 3) Study of the principle of the constitutional supremacy established among the American countries, the practical and legal methods for its maintenance, through an analogous or similar suit to the Mexican suit of amparo.
- 4) That in the preparation of papers on constitutional law to be presented to the Inter-American Bar Association, particular care should be taken in considering the living Constitution, perpetuated through acts, at the same time as the written Constitution based on its text.

Committee VII—Communications, Including Air Law, Telecommunications, Maritime and Highway Transportation

- 1) Uniform facilities in international air transportation, without detriment to the exception of coastwise transportation of the respective national services.
- 2) Simplification of the requirements and uniformity of the documents required for transportation by air of passengers and merchandise.
- 3) Uniformity of the provisions which regulate the radiocommunication services, particularly the licenses for operation and use of the same, on the basis of the principle of freedom established in Recommendation III of the

Second Inter-American Conference on Radiocommunications of Santiago, in January, 1940.

- 4) Ownership title of motor vehicles. The liability in urban and highway traffic. Accidents. Penalties. Traffic courts.
- 5) Restriction on ownership for the benefit of a program of highway improvement. Legal regulations of servitudes affecting roads, such as transmitting lines of telegraphs, telephones, tubes, etc.
- 6) Legal principles which should regulate the coordination of international transportation by land, river, sea and air.
- 7) Regulation of international transit on the basis of simplification of requirements and required documents.
- 8) Simplification of the requirements for international maritime navigation.

Committee VIII—Industrial, Economic and Social Legislation

- 1) Legal principles regulating the procedure in cases of intervention by the state in labor conflicts.
- 2) Legal principles covered in the procedure for the regulation of the use of natural resources.

Committee IX-Penal Law and Procedure

- 1) Law on the criminal liability of corporate persons.
- 2) Territoriality of criminal law.
- 3) Duties of judges and attorneys in penal procedure.
- 4) Civil liability resulting from crime (tort).
- 5) Prescription in criminal matters.
- 6) The judging and punishment before the courts of one country of the offense committed in another country.

Committee X-Territorial Waters and Oceanic Fisheries

- 1) Legal principles referring to the procedure to regulate the exploitation of the resources of the oceans and seas.
- 2) Legal principles relative to the use of maritime waters for industrial purposes, such as the installation of "floating islands."
- 3) The possibility and methods of compiling information with respect to the history of international rivers in America, relative to the legal principles involved in treaties, conventions and judicial decisions.

Committee XI—Admiralty Law

- 1) Uniformity of certain concepts of maritime risks.
- 2) Unification of legislation with respect to shipping documents based on the rules of the Brussels Convention of 1924.2
 - ² Text in this JOURNAL, Vol. 27, No. 1 (January, 1933), Supplement, p. 18.

- 3) Uniformity in the regulation of collision, salvage and aid, based on the agreements of the Brussels Convention of 1910.
- 4) Property rights in shipments, and the methods of acquisition and transfer.
 - 5) Maritime credits, their classification and privileges.
 - 6) Maritime liens, formalities and legal effects.

Committee XII—Activities of lawyers' associations (bar associations)

- 1) Legal organization of lawyers and disciplinary jurisdiction.
- 2) Social security for the legal profession.
- 3) Legal aid to the poor.
- 4) Professional secrecy.

Committee XIIÍ—Intellectual and Industrial Property

Committee A—Committee on Intellectual Property,

- 1) Nature of legal aid in intellectual production.
- 2) The moral rights of the author and the adequate legal protection thereof.
- 3) Study and discussion of the Draft of a Uniform Law on Literary, Scientific and Artistic Property which the Inter-American Academy of Comparative and International Law of Havana will present.

Committee B—Industrial Property (Patents and Trademarks)

- 1) Advantage of making uniform the legislation with respect as to what constitutes a patentable invention, or a trademark proper for registration, and the reasons why one or the other would fail to be so.
- 2) Administrative measures recommendable for aid in the exercise of the rights corresponding to the owner of an invention patent of a privilege of an industrial model, or of a trademark, and the possibility of making the legislation uniform in this respect.
- 3) To whom does the right of industrial property belong in the case of an invention made by an employee?

Section XIV—Legal Education

- 1) Studies and prerequisites to legal education.
- 2) Description of each course of legal study and of teaching methods.
- 3) Requirements for admission to the bar.
- 4) Importance of ethics and equity in law studies.

From the Mexican Conference the study of the following proposed resolutions were left pending and they are assigned to this section:

5) The Inter-American Bar Association proposes to the Universities and Law Schools of America that they so organize their programs that they will

³ Text in Malloy, Treaties, Vol. III, p. 137.

be more comprehensible to alien students who study comparative legislation of the Americas and easier to assimilate.

6) That a study be made of a system to the effect that the students in the universities and law schools of one country of the Americas may obtain recognition of the value of their work in the universities or law schools of any other country of America.

Section XV—Comparative Civil and Commercial Law Committee A—Laws on Trusts (fideicomiso)

- 1) Study of the principles of Anglo-Saxon "trusts."
- 2) Advantage of making uniform the legislation on "trusts."

Committee B—Unification and coördination of the legislation with respect to legal status of persons

- 1) Unification of legislation relative to the constitution, and to the nationality of juridical persons (corporate bodies) in private law.
- 2) Unification of legislation concerning the requirements for the validity of marriages and divorces.

Committee C-Unification of the law of obligations and contracts, civil and commercial

- 1) Unification of law on letters of exchange and promissory notes.
- 2) Unification of insurance law.
- 3) Unification of law on terrestrial and maritime transportation, principally referring to the general conditions of booking-tickets, and of chartering and freight documents.

From the Mexican Conference the study of the following resolution was left pending:

- 4) That a special committee be appointed to study the possibility of enacting a uniform law in the various countries of America to control international cartels and if the committee is of the opinion that the law is practicable, for the purpose that it propose adequate legislation.
 - 5) Unification of obligations and contracts in general.

Section XVI—Municipal Law

- 1) Legal principles and practice followed in the relations of a central administration and the municipality with regard, particularly, to municipal autonomy and administrative protection.
- 2) Legal restrictions, controls and procedures with respect to municipal credit and its guarantees.

Committee XVII—International Post-War Juridical Problems

1) Diplomatic protection; the Calvo clause and the guarantees of international rights of man.

- 2) Diplomatic protection of citizens abroad.
- 3) The proposed resolution with respect to these two topics, which reads thus:
- a) To urge that, within the world order, the "Diplomatic Protection of Nationals Abroad" be replaced by "International Protection of the Rights of Man" maintaining the former transitorily (temporarily) while an appropriate international system for the application of the latter is being organized, only for those cases which are very clearly cases of denial of justice, strictly interpreted, which are to be found expressly provided for in treaties and conventions to which the claiming state, as well as the one which is object of the claim are parties.
- b) To declare, with respect particularly to America, that the nations of the Continent, because of the similarity of its republican institutions, its inviolable ambition for peace, its profound sense of humanity and tolerance, and its absolute adherence to the principles of international law of equality in the sovereignty of the nations and individual freedom without religious or racial prejudices, "have reached an analogous reasonable standard of justice," which makes diplomatic protection unnecessary, because between Nations fulfilling such conditions, it is a universally accepted principle, without a single discrepancy, that the maximum to which a foreigner can aspire is an equality of rights with the national.
- c) That the American republics work through treaties as the first step towards a goal of total and explicit abolition of diplomatic protection, that two continental conventions be signed, which later may be transformed into world conventions, consecrating therein respectively the integral validity of the Calvo Clause—which is nothing more than a legal formula to obtain the practical application of the principle of equality in the rights mentioned in the above paragraph and the non-liability of a nation for damages caused by foreigners resident therein, by virtue of, or on the occasion of civil wars.
- 4) The proposal of Don Octavio Vejas Vasquez, formulated at the third Conference, with respect to Inter-American Post-War Organization.
 - 5) International Law Organizations in the Post-War Period.

Arrangements have been made with the Pan-American Airways for a 15% discount on the regular rates for delegates and their immediate families accompanying them.

Hotel reservations should be made by the delegates. They should communicate directly with Senor don Ignacio Ureta Errazuriz, Federacion Inter-Americana de Abogados, calle San Martin No. 98, Santiago, Chile, by air mail as it is important to make reservations at an early date.

WILLIAM ROY VALLANCE

RECENT LEGISLATION AFFECTING THE AMERICAN FOREIGN SERVICE

On May 3, 1945, President Truman signed a significant bill designed to adapt the Foreign Service of the United States more effectively to its new

needs and responsibilities.* The measure had been pending in Congress for over a year, but, owing to the pressure of other important legislation, was not finally acted upon until this Spring.

The new law modifies or supplements the Moses Linthicum Act of 1931, which is the present organic act of the Foreign Service, in several important respects:

First: It creates a new group of administrative and fiscal personnel within the Foreign Service. The purpose of this is to permit the recruitment from both within and outside the service of individuals qualified to perform administrative duties at foreign posts, and to provide for the classification and salaries of such personnel commensurate with those duties. Prior to the passage of this legislation there was no special group of administrative personnel in the Foreign Service and the administrative duties at the foreign posts were performed either by some of the regular career officers or by senior clerical employees (with salaries up to \$4,000) who had been promoted from the lower grades. Some of these clerical employees were actually performing duties above those of their classification and salary status and this situation can now be corrected under the recent legislation.

The new law provides for three classes of administrative officers with salaries ranging from \$3,500 to \$5,600, three classes of administrative assistants with salaries ranging from \$2,600 to \$3,800, and two classes of clerks with salaries ranging up to \$2,900. The entire group is referred to as "the administrative, fiscal, and clerical personnel of the Foreign Service." They will be appointed by the Department of State, and will be entitled to the same administrative promotions in compensation which apply to civil service personnel in other agencies of the federal government.

With the reopening and reorganization of our Foreign Service establishments in Europe and other liberated areas there is an increased need at the present time for administrative personnel and the new law should greatly facilitate their recruitment. In the past, with clerical personnel in the higher grades being often used for administrative work, the only channel for obtaining such personnel under the 1931 law was through promotion from the lower grades. Under the new provisions it will be possible to supplement this with direct appointments of qualified individuals from the outside. The Department of State has no intention, however, of resorting to such outside appointments until it is certain that the needed positions cannot be filled by promotions from within the existing clerical service. Many senior clerical employees have already become expert in fields such as office administration, citizenship and immigration work, shipping, and commercial and economic reporting. The Department has every intention of seeing that these individuals are given the salary classification and status which they have long since

* Public Law 48, 79th Congress. Text below, Supplement, p. 159. This note was prepared as part of a broader study on the American Foreign Service now in process under a grant from The American University, Washington, D. C.

deserved, and that other clerical employees with administrative capacities are promoted to a suitable classification in the new corps of administrative and fiscal personnel. But, subject to this principle, the Department will have a much wider field than heretofore from which to recruit administrative officials for its Foreign Service establishments. Already the work of classifying the positions in the new administrative, fiscal, and clerical service, and of filling these positions wherever possible by promotion from the clerical ranks, has begun.¹

Second: The new law permits the assignment for special duty in the Foreign Service, for periods up to four years, of qualified personnel from the Department of State or of qualified personnel from other federal agencies who have rendered five years or more of government service.² This is a very significant addition, designed to enable the Foreign Service to expand or contract more easily as needed, and to secure the services of trained specialists in various fields bearing on foreign relations.

Since 1941 the recruitment of new officers at the bottom of the scale has been temporarily suspended because of the drafting of men of military age. At the same time the demands on the Foreign Service have greatly increased because of the war, particularly the demand for specialists in such fields as economic analysis (to assist in the program of lend-lease administration and economic warfare), strategic raw materials and minerals, agriculture, labor, civil aviation, cultural relations, and public information services. In order to meet this need for specialized personnel, over four hundred qualified persons have been given temporary wartime appointments in what has been known as the Foreign Service Auxiliary.³

The Foreign Service Auxiliary as such will be terminated at the close of the present emergency period but it is anticipated that the need for many of these specialists will continue thereafter as the United States assumes an ever widening responsibility in international affairs. The new foreign service law recognizes this by permitting the assignment of qualified officers from other federal agencies as well as the Department of State for periods up to four years. These officers will be appointed to the Foreign Service by the

¹ Department of State Bulletin, May 20, 1945, p. 939.

² It is not entirely clear from the wording of the law whether State Department personnel will also have to have had five years of government service before they can be given these temporary assignments to special duty in the Foreign Service. It will be necessary to await a legal opinion to settle this point.

^{*}Some two hundred additional appointments to the Auxiliary have also been made of younger men who have been deferred from military service for physical reasons, or who have been discharged from the armed services. They have been appointed as junior officers and have been assigned to general consular duties. Counting both the specialists and the junior officers, there was a total of 637 Foreign Service Auxiliary officers on March 1, 1945, as compared with 766 regular Foreign Service officers—which gives some idea of the important role played by the Auxiliary in meeting the wartime need for expansion in the Foreign Service at a time when it was not practicable to offer the regular entrance examinations: Congressional Record, March 27, 1945, p. 2921.

Secretary of State after careful examination of their background and qualifications. They will be commissioned with designations appropriate to their duties in the Foreign Service establishments to which they may be assigned, and will receive the salary and allowances of regular Foreign Service officers. Upon completing their assignments they will be reinstated in the department or agency from which they were originally loaned.

Third: As a corollary to the above provisions, the act of May 3, 1945, provides that regular Foreign Service officers may be assigned to other government departments or agencies for periods up to three years (or four years in case of special need). This will permit a wider utilization by all government departments of the special experience of Foreign Service officers. Taken together with the provisions discussed in the second section above, it will make possible a desirable interchange of personnel between the Foreign Service and other government agencies, with mutual advantages to all concerned.

In actual practice the assignment of Foreign Service officers to other government agencies will not be an innovation. On many occasions such officers have been "lent" to other agencies to perform specific jobs. The new law recognizes this and makes it legally possible.

Fourth: A very significant provision from the standpoint of morale among Foreign Service officers is that which removes the limitations prescribed by the 1931 act and its predecessor of 1924 on the percentage of officers who can be included at any one time in the first six classes of Foreign Service Officers. According to the 1924 and 1931 acts the number of officers in the first six classes were limited to the following percentages of the total number of officers in the service: Class I, 6%; Class III, 8%; Class IV, 9%; Class V, 10%; and Class VI, 14%. By this provision no more than 54% of the total officer personnel could be included in the first six classes at the same time.

During the present wartime emergency this operated to produce a very undesirable situation. The officers at the top, who would have normally retired, remained loyally at their posts because of the increased need for personnel and the inability to secure younger men at the bottom of the scale. This caused an almost complete closing of the opportunity for promotion of officers from the middle classes into the higher classes since the latter remained filled up to their legal quotas. There resulted consequently a lowering of morale and efficiency among many officers who deserved promotions but could not expect them.

It had also been discovered from twenty years' experience with the Rogers Act that a certain number of officers would rise to Class IV and at that point reach the peak of their development. They would still be satisfactory officers of that class but not merit further promotion. Since this class was limited by law to nine percent of the service this meant that Class IV became quickly filled up and remained that way. There were not enough promo-

tions from Class IV to Class III to make room for all the men in Class V who deserved promotions to Class IV and this meant that promotions were blocked for some distance down the line. Class V remained full to its limit of ten percent of the service, thereby blocking the promotions of men in Class VI. Class VI in turn, which was limited to fourteen percent of the service, usually remained full and this held up the promotion of men in Class VII.⁴

The purpose of these percentage limitations was evidently to assure that the Board of Foreign Service Personnel, in recommending promotions, would not overload the upper classes. The experience of the past twenty years, however, has shown that the Board does not operate in this way, and that it is not likely to promote individuals who do not deserve it nor to upset a proper balance between the classes. The repeal of the limitations will make it possible at last to accord promotions where deserved, without artificial restrictions, and will help greatly to bolster morale and efficiency in the Foreign Service.

On May 14, 1945, a series of promotions was announced, under authority of the new legislation, representing the first step toward the belated recognition of merit for officers who should have been advanced during the past two or three years. The Board of Foreign Service Personnel has furthermore decided to suspend temporarily the administrative regulation prescribing a minimum of two years service in Classes V and above before becoming eligible for promotion, and eighteen months in Classes V-VIII. In its place a rule requiring only one year of service in any of the classes will be applied. This action has been taken in fairness to those officers who have missed not merely one but two promotions because of the percentage limitations and it will facilitate more rapid promotions than could ordinarily take place. suspension will not be permanent for the eighteen-months-two-year rule is regarded as a good one in normal circumstances. But until the personnel of the Foreign Service can be again brought into a proper balance and qualified junior officers given the rank to which their records entitle them the promotion procedure will be speeded up in this manner. In a few cases of special merit double promotions will be granted and several of these were announced in the list of May 14.

Fifth: Finally, the law of May 3, 1945, provides various minor administrative adjustments in the organization of the Foreign Service:

a) Formal legal provision is made for representatives of the Departments of Agriculture and Commerce to sit as members of the Board of Foreign Service Personnel when the selection and assignment of agricultural and commercial attachés and specialists are being considered. This simply formalizes

And Nathaniel P. Davis, "How Promotions Are Made," in American Foreign Service Journal, August, 1944, p. 407.

⁵ Department of State Bulletin, May 20, 1945, p. 939.

⁶ Davis, as cited, p. 408.

the situation which has existed since the Foreign Agricultural Service and the Foreign Commerce Service were incorporated in the Foreign Service by Reorganization Plan Number 2 of May 9, 1939.

- b) The provision of the 1931 act is repealed which required that Foreign Service officers assigned to the Division of Foreign Service Personnel could not be promoted to the grade of Minister or Ambassador during this assignment or for three years thereafter. This makes it possible for these officers to be accorded the same opportunity for advancement as exists for other officers in the service and removes what heretofore amounted almost to a penalty attaching to an assignment in this division.
- c) The provision of the 1931 act is repealed which prescribed that only Foreign Service officers of Class I could be assigned to the Division of Foreign Service Personnel. Officers of other classes may now be assigned there.
- d) It provides that the Director of the recently created Office of Foreign Service shall be a Foreign Service officer of Class I.
- e) It clarifies the provisions for the bonding of Foreign Service personnel by stating specifically that only one bond shall be required for the faithful performance of all the duties which may be assigned them. Separate bonds are not to be required for different parts of the duties which may be assigned to a man under different statutes. This was apparently the intention of the earlier legislation but in practice it was not so interpreted and separate bonds were required for various parts of an officer's duties. A considerable burden and expense to the officers resulted from this and the new legislation is intended to correct the situation. It is now assured that the bond originally given by a member of the Foreign Service at the time he enters upon his duties shall suffice so long as he remains with the service and so long as the penalties guaranteed by the bond are sufficient.
- f) It formalizes, with a few minor clarifications, the legislative provisions from earlier acts of 1930 and 1931 regarding the allowances for foreign service officers and clerks. No basic change in the situation is made, however.

Although the law of May 3, 1945, makes several much needed improvements in the organization of the Foreign Service it is still regarded by the Department of State as only an interim measure which needs to be implemented as soon as possible by more comprehensive legislation. Careful study is being given to this problem by the Office of Foreign Service and there is every indication that the Department regards the strengthening of the Foreign Service as one of its foremost tasks of the immediate future.

The expansion and reorganization of the Office of Foreign Service in April, 1945, is symptomatic of the Department's attitude on the subject. The office is to become a much stronger unit, with broader responsibilities for the over-all administration and coördination of Foreign Service activities and their relationship to the Department of State and other interested gov-

ernment agencies. New emphasis is given to the important functions of planning in the Foreign Service program and the training of personnel, and new divisions are created in the Office of Foreign Service to handle these problems. A new Division of Foreign Reporting Services is also created to assure that the Department of State and other government agencies are effectively supplied with the information they need. The Divisions of Foreign Service Personnel, Foreign Service Administration, and Foreign Buildings Operations are continued with some realignments of functions and responsibilities.

Taken together the legislation of May 3, 1945, and the reorganization of the Office of Foreign Service constitute a significant and encouraging step toward the goal of an effective and adequately equipped Foreign Service to deal with the political, economic, and social problems of the post-war world.

ELTON ATWATER

THE UNITED NATIONS WAR CRIMES COMMISSION

On January 13, 1942, an Inter-Allied Conference met in London at St. James's Palace, which had been placed at its disposal by the Government of the United Kingdom. It was the first conference to be convened on the initiative of the Allied Governments established in the United Kingdom. Its purpose, in the words of Mr. Anthony Eden, Secretary of State for Foreign Affairs of the United Kingdom, was "to make plain the attitude of these Governments to the cruel and tragic events taking place in their countries."

Those taking part in the Conference were the delegates of the Governments of Belgium, Czechoslovakia, Free France, Greece, Luxembourg, the Netherlands, Norway, Poland and Yugoslavia. Representatives of Great Britain, Australia, Canada, India, New Zealand, the Union of South Africa, the United States of America, the Union of Soviet Socialist Republics and China were present as guests at the Conference table. After a speech of welcome by Mr. Eden, and speeches by the delegates representing the Allied countries under enemy occupation, these delegates signed a Joint Declaration on Punishment for War Crimes which read as follows:

The undersigned, representing the Government of Belgium, the Government of Czechoslovakia, the Free French National Committee, the Government of Greece, the Government of Luxembourg, the Government of the Netherlands, the Government of Norway, the Government of Poland and the Government of Yugoslavia:

Whereas Germany, since the beginning of the present conflict, which arose out of her policy of aggression, has instituted in the occupied countries a regime of terror characterized among other things by imprisonments, mass expulsions, the execution of hostages, and massacres,

And whereas these acts of violence are being similarly committed by the Allies and

Departmental Order No. 1314, effective April 1, 1945: Department of State Bulletin, April 22, 1945, p. 777. See also, "Reorganization of the Office of Foreign Service," by Monnett P. Davis, American Foreign Service Journal, May, 1945, pp. 20-21.

Associates of the Reich and, in certain countries, by the accomplices of the occupying

And whereas international solidarity is necessary in order to avoid the repression of these acts of violence simply by acts of vengeance on the part of the general public, and in order to satisfy the sense of justice of the civilized world.

Recalling that international law, and in particular the Convention signed at the Hague in 1907 regarding the laws and customs of land warfare, do not permit belligerents in occupied countries to commit acts of violence against civilians, to disregard the laws in force, or to overthrow national institutions.

(1) affirm that acts of violence thus inflicted upon the civilian populations have nothing in common with the conceptions of an act of war or of a political crime as understood by civilized nations,

(2) take note of the declarations made in this respect on October 25, 1941, by the President of the United States of America and by the British Prime Minister,

(3) place among their principal war aims the punishment, through the channel of organized justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them, or participated in them.
(4) resolve to see to it, in a spirit of international solidarity, that (a) those guilty or responsible, whatever their nationality, are sought out, handed over to justice and judged, and (b) that the sentences pronounced are carried out.

In the declarations referred to in paragraph (2) above, the President of the United States had condemned the practice of executing innocent hostages and had pointed out that frightfulness sowed the seeds of hatred which would one day bring fearful retribution. Mr. Winston Churchill, associating himself with the President's sentiments, had announced that retribution for such crimes "must henceforward take its place among the major purposes of the war."

That a similar attitude was adopted by the Soviet Union was implied in the Molotov note of January 6, 1942, which indicated that German atrocities were being registered. A third note, dated April 27, 1942, announced that retribution would be exacted.

The Chinese Government accepted the principles laid down in the Declaration of the Allied Governments in a note dated January 9, 1942. `The Soviet Government subscribed to them on October 14, 1942, when replying to a note verbal dated July 23 from the Governments of the nine Allied countries under enemy occupation.

On August 21, 1942, the late President Roosevelt referred to the Joint Declaration in a statement which concluded with the words:

The United Nations are going to win this war. When victory has been achieved, it is the purpose of the Government of the United States, as I know it is the purpose of each of the United Nations, to make appropriate use of the information and evidence in respect to these barbaric crimes of the invaders, in Europe and in Asia. It seems only fair that they should have this warning that the time will come when they shall have to stand in courts of law in the very countries which they are now oppressing and answer for their acts.

Mr. Winston Churchill, on September 8, 1942, identified the Government of the United Kingdom and the House of Commons with President Roosevelt's words.

On October 7, 1942, the punishment of war crimes was the subject of a debate in the House of Lords. It was introduced by Viscount Maugham, who analyzed the problem and described the position after the first World War.

In the course of the debate, the Lord Chancellor, Viscount Simon, announced, on behalf of His Majesty's Government in the United Kingdom that it was proposed to set up with the least possible delay a United Nations Commission for the Investigation of War Crimes. This decision, he said, had been taken after careful study of the subject and close communication with others of the United Nations.

Lord Simon reminded the House of the difficulty experienced by lawyers in endeavoring to establish the weight and accuracy of a piece of testimony when that testimony had become stale and smudged by the passage of a long time before it was recorded. He told the House that President Roosevelt was issuing a corresponding statement in Washington that afternoon. He added that the proposal had the joint support of the Governments of the two countries and had been communicated to the other United Nations directly concerned, including the Soviet Union and China, the Dominions and India, and the Fighting French. Replies had already been received from the Allied Governments established in London and from the French National Committee warmly approving and adopting the proposal.

To prevent any misunderstanding and to take away any possible excuse for misrepresentation in enemy quarters, Lord Simon emphasized that the aim was not to undertake or encourage mass executions but to fix the crimes upon those enemy individuals who were proved to be responsible, whether as ring-leaders or as actual perpetrators, for atrocities which violated every tenet of humanity and had involved the murder of tens of thousands of innocent persons.

Lord Simon said that a great deal of attention had been given to the very difficult question of the steps to be taken for the production of persons accused. The Treaty of Versailles had failed to secure the effective punishment of the principal criminals after the first World War, partly because provision for the purpose was only contained in the final Treaty of Peace negotiated and signed in June 1919, months after the Armistice. This time it was proposed that named criminals wanted for war crimes should be handed over at the time of and as a condition of the Armistice with the right to require the delivery of others as soon as the supplementary investigations were complete.

In announcing on the same day that the United States Government would cooperate in setting up a United Nations Commission, President Roosevelt declared it to be the intention of the Government of the United States that the successful close of the war should include provision for the surrender of war criminals to the United Nations.

On December 17, 1942, a Declaration was made simultaneously in

London, Moscow, and Washington in connection with reports that the German authorities were engaged in exterminating the Jewish people in Europe. In this Declaration, the Governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, the United States of America, the United Kingdom, the Soviet Union, Yugoslavia, and the French National Committee reaffirmed their solemn resolution that those responsible should not escape retribution and their intention to press on with the necessary practical measures to that end.

Some months later, on October 20, 1943, the Commission was brought into being, under the title United Nations War Crimes Commission, at a meeting of Government representatives at the Foreign Office in London.

The Commission was set up to investigate war crimes. In a recent debate in the House of Lords (March 20, 1945), the Lord Chancellor (Lord Simon) said that he regarded the question of dealing with war criminals as something very much more than mere retaliation. Justice, he said, was the basis of a free life. Civilization could not advance unless everybody was enabled to feel that the law was strong enough to protect him from hideous wrong. It was absolutely essential to combine to strengthen international law, and no single contribution was more likely to strengthen and put in their proper shape the world-wide rules of right and wrong than that the war criminals should be dealt with on the basis that those who were guilty would be swiftly and justly punished.

The Commission consists of sixteen members—the representatives of the Governments of Australia, Belgium, Canada, China, Czechoslovakia, France, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, the United Kingdom, the United States of America, and Yugoslavia. These representatives are all distinguished lawyers and diplomatists.

The first Chairman was the United Kingdom representative, Sir Cecil Hurst, Vice-President of the Permanent Court of International Justice, formerly Legal Adviser to the Foreign Office. After his resignation on account of ill health he was succeeded as chairman by Lord Wright, Lord of Appeal in Ordinary, who represents Australia on the Commission. Lord Wright has been Chairman since January 31, 1945.

The Commission is primarily a fact-finding body, but it has also advisory functions.

Its terms of reference were strictly defined in the Lord Chancellor's statement of October 7, 1942. Its purpose, he said, is to investigate war crimes committed against nationals of the United Nations, recording the testimony available, and to report from time to time to the Governments of those nations cases in which such crimes appear to have been committed, naming and identifying wherever possible the persons responsible.

After its creation, the Commission was entrusted with advisory functions, namely, to make recommendations to the Governments on the methods to be

adopted to ensure the surrender or capture of the persons wanted for trial as war criminals and on the tribunals by which they should be tried.

Early in its work the Commission urgently recommended to each-of the member nations to establish national war crimes offices to investigate war crimes against the citizens or subjects of their own countries. Each has now a war crimes office which detects, investigates, and records evidence of war crimes. The national offices receive their information from members of their armed forces, refugees, and other sources. The information is checked and collated as far as possible. When a national office feels that a case is reasonably complete it forwards a summary of it to the United Nations War Crimes Commission or its Sub-Commission in the Far East which examines the information and materials.

These bodies, if they believe a war crime has been committed and that the information shows that there is, or will be at the time of trial, sufficient evidence to justify a prosecution, place the name or description of the individual upon their lists.

Under the above system the Commission performs a limited function and proceeds in a manner somewhat similar to that of a committing magistrate. The actual investigation, including the detection of crime, interviewing of witnesses, and preparation of cases, is done by the official agencies best suited to conduct investigations within the national boundaries and according to the laws of each country. It is thus unnecessary for an international commission to assume the official police duties of each of the nations and attempt to operate within the jurisdiction of each country.

After lists of war criminals have been prepared and transmitted to the Governments concerned, they are furnished to the apprehending authorities, at present the military authorities, in order that the persons named may be apprehended and turned over to the proper nation for trial.

The Commission has three committees.

The Committee on Facts and Evidence performs fact-finding functions, examining the evidence in its possession mainly in the light of three questions:

- (i) Do the charges made disclose the existence of a war crime or crimes?
- (ii) Is there sufficient material to identify the alleged offender?
- (iii) Is there good reason to assume that, if put on trial, the alleged offender would be convicted?

Detection and investigation of war crimes were hampered while countries were still occupied by the enemy. Evidence was difficult to obtain and secrecy had to be maintained to prevent alleged offenders from trying to escape and to avoid reprisals on persons in enemy hands or on the families of members of the Commission in occupied territory. For this reason the Commission received only a limited amount of information at first, but a far greater amount has since been submitted.

The Committee on Enforcement and the Committee on Legal Questions are

purely advisory. They report their findings to the Commission, which advises member Governments accordingly.

In May, 1944, steps were taken to set up a Sub-Commission or branch of the main Commission at Chungking. It is composed of representatives of Australia, Belgium, China, Czechoslovakia, France, India, Luxembourg, the Netherlands, Poland, the United Kingdom, and the United States. Its Chairman is the Chinese representative, Dr. Wang Chung-Hui, Secretary General of the Supreme National Defense Council. It is examining information against Japanese war criminals, and preparing lists for forwarding to all the participating nations.

The main Commission in London is not precluded from receiving evidence of war crimes in the Far East from other channels, and it has considered a number of charges against Japanese.

The Soviet Union is not a member of the War Crimes Commission but has set up a commission of its own—the Russian Extraordinary State Commission. Both Commissions are working with the same end in view, and in an interview on his election as Chairman of the United Nations War Crimes Commission, Lord Wright said that close cooperation between the two commissions was eminently desirable. In his opinion their approaches to the common problem are not radically different.

Members of the Commission have visited the Buchenwald Concentration Camp, at General Eisenhower's invitation. The Commission has also conferred with representatives of the military authorities engaged in the arrest and identification of war criminals in the European theatres of war as well as with United States Congressmen who visited various concentration camps.

As a result of an invitation from the military authorities in Germany, the Commission arranged for certain European Governments to send war crimes investigation officers to Germany. These officers assist the military authorities in collecting evidence of war crimes in the concentration camps and elsewhere.

M. E. BATHURST

First Secretary and Legal Adviser, British Embassy, Washington, D. C.

MISCELLANEOUS NOTES

Students of both comparative law and international law will be interested in the new Boletin del Instituto de Legislacion Comparada y Derecho Internacional whose publication was begun early this year—albeit the inaugural number is marked July-December, 1944—by the Universidad Inter-Americana at Panama, under the direction of Dr. Demofilo De Buen of the Instituto. The first issue contains an editorial on the program of the Boletin by Dr. Octavio Mendez Pereira, Rector of the University, biographical material and tributes to Dr. Justo Arosemena, of Colombia and Panama,

¹ Distributed by the *Universidad Inter-Americana*.

doctrinal articles on subjects in the fields covered by the review; documentary materials, bibliography, and notes of current events. It is intended that the *Boletin* will regularly carry materials of these types. The new publication is a welcome addition to international jurisprudence in this hemisphere.

In February and March a group of Agreements were signed between the United Nations Relief and Rehabilitation Administration and the Governments of Czechoslovakia, Greece, Italy, and Yugoslavia which contain many points of interest for students of international law and organization.2 The bulk of each Agreement—the instruments are largely uniform in content and even in phraseology-deals with the subject matter of relief, such as supplies, services, distribution, and finance, but certain points have a strictly legal bearing. Thus the mere fact that the Agreements were signed by an international organization on one side and states or governments on the other,—notably governments whose legal status also varied greatly, while by no means entirely new, is still of interest and significance. provisions for diplomatic privileges and immunities for the personnel involved in the work are very striking as are other provisions relating to the jurisdiction of the signatories in general. So finally for the provisions anticipating revision or extension of the instruments. One has the impression that somewhat new and possibly fruitful innovations are being made here in considerable numbers.

The first Congress of the Egyptian Society of International Law was held in Alexandria on April 5-7 of this year; reports of the meeting are contained in the Journal des Tribunaux Mixtes, published in that city. Among the subjects discussed were the new Arab Union, the problem of the International Court of Justice, questions of nationality, refugees, and conflicts of law, arbitration and the clause compromissoire, revision of treaties, and immunities from jurisdiction. At the opening session, attended by a representative of His Majesty King Farouk, a letter was read from the Minister of Justice, M. Hafez Ramadan Pacha, welcoming the Society and wishing it all success. Prominent parts were taken in the proceedings by the newly elected President of the Society, M. Amine Anis Pacha, Dr. Abdel Hamid Badaoui Pacha, Minister of Foreign Affairs and delegate to the United Nations' Conference at San Francisco, as well as by the advisers to the Egyptian delegation to the United Nations Committee of Jurists which met in Washington on April 9, Dr. Abdel Moneim Riad and Dr. Helmy Bahgat Badaoui, both of whom attended the meeting of the Washington members of the American Society of International Law on April 13 and 14.

² Documents distributed by the UNRRA.

³ Nos. 3446, 3448, 3451, 3452, 3454, 3455, 3458; copies provided by Judge Jasper Y. Brinton. On the founding of the Egyptian society see this JOURNAL, Vol. 38, No. 3 (July, 1944), p. 473.

A new International Arbitration Journal began publication under the auspices of the American Arbitration Association in April, 1945. The new review is to succeed the Arbitration Journal (1937–1942) and is to deal chiefly with arbitration at the economic level, without being uninterested in the broader juridical and political aspects of the question. Articles appear in the first issue dealing with commercial arbitration, civil aviation, and similar topics, including a brief note on Postwar Financial Settlements by Arthur K. Kuhn, of the Board of Editors of this JOURNAL. Some attention is given to statutory legislation on the subject of arbitration, to Inter-American and Canadian activities, and to recent publications in the field. A promotional or didactic note is clearly visible in all of the material presented, without, necessarily, any disposition to depart from that sound science without whose support all art, including the art of arbitration, must more or less fail.

P. B. P.

⁴ Wesley A. Sturges, Chairman of the Board; Martin Domke, Research Director; Office: 9 Rockefeller Plaza, New York City.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD FEBRUARY 16-MAY 15, 1945 (Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: B. I. N., Bulletin of International News; C. S. Monitor, Christian Science Monitor; Cmd., Great Britain Parliamentary Papers by Command; Cong. Rec., Congressional Record; D. S. B., Department of State Bulletin; Ex. Agr. Ser., U. S. Executive Agreement Series; G. B. M. S., Great Britain Miscellaneous Series; G. B. T. S., Great Britain Treaty Series; P. A. U., Pan American Union Bulletin; U. S. T. S., U. S. Treaty Series.

September, 1939

1-May 5, 1945 World War. Chronology of 100 outstanding dates: N. Y. Times, May 6, 1945, sect. 4, p. 5

October, 1944

10-January 11, 1945 MEXICO—UNITED STATES. Exchanged notes at Mexico City regarding limitation of the production of opium. Texts: D. S. B., May 13, 1945, pp. 911-912.

February, 1945

13-May 1 United Nations Conference on International Organization. President Roosevelt named U. S. delegation on Feb. 13. Members: D. S. B., Feb. 18, 1945, p. 217; N. Y. Times, March 2, 1945, p. 13. Text of invitation to U. S. delegates: N. Y. Times, March 2, 1945, p. 13. Department of State announcement, embodying the invitations to 39 nations, in addition to the sponsoring countries, and the voting procedure in the general international organization, was released March Text: D. S. B., March 11, 1945, pp. 394-397; N. Y. Times, March 6, 1945, p. 10. Neutral nations, ex-enemy countries, and Syria, Lebanon, Iceland and Denmark were omitted, as well as Poland until a government should be set up there in accordance with provisions of the Crimea Conference. List of countries invited: N. Y. Times, March 6, 1945, p. 9. Syria and Lebanon protested formally against their exclusion. N. Y. Times, March 10, 1945, p. 8; London Times, March 9, 1945, p. 3. On March 15 the Polish Prime Minister Arcizewski made public in London a note of protest on Polish exclusion, sent March 12 to the United States, Great Britain, China and all the United Nations except Russia. N. Y. Times, March 16, 1945, p. 9. Text: Cong. Rec. (daily), March 21, 1945, p. A1463: Partial Text: London Times, March 16, 1945, p. 3. Polish Provisional Government's note demanding invitation to the Warsaw Government was published March 26. N.Y. Times, March 28, 1945, p. 16. Text of Tass Agency's statement supporting inclusion of the Provisional Government: N. Y. Times, April 1, 1945, p. 24: London Times, April 3, 1945, p. 3. Personnel of the delegations: D. S. B., April 8 and 22, 1945, pp. 609-610; 729-731. Announcement was made April 14 that Foreign Commissar Molotoff would head the Russian delegation. N. Y. Times, April 15, 1945, p. 1; D. S. B., April 15, 1945, p. 671. Department of State received April 18 the Russian note asking that the Warsaw Government represent Poland. N. Y. Times, April 19, 1945, p. 1. The United States declined the request. N. Y. Times, April 20, 1945, p. 1; D. S. B., April 22, 1945, p. 725. List of 46 nations represented at opening meeting on April 25 at San Francisco: N. Y. Times, April 26, 1945, p. 4. Texts of addresses at the opening: N. Y. Times, April 26, 1945, p. 4; D. S. B., April 29, 1945, pp. 789-800. Texts of addresses of April 26: N. Y. Times, April 27, 1945, p. 12. On April 27 the Conference voted: (1) to invite the Ukraine and White Russian governments to membership; (2) to delegate to Mr. Stettinius the chairmanship of the Steering Committee; (3) to approve a resolution inviting Poland to revise its government for membership; (4) to rotate the office of presiding officer among the sponsoring governments. N. Y. Times, April 28, 1945, pp. 1, 10. Voted April 30 to seat immediately Ukraine, White Russia and Argentina. N. Y. Times, May 1, 1945, p. 1. Set up on May 1 four Commissions—general provisions, general assembly, security council and judicial organization. N. Y. Times, May 2, 1945, pp. 1, 18. Committee nominations (by country): p. 19. Subjects under discussion included war crimes, international trusteeship, ultimate independence for colonies, and regional security systems within the proposed international organization. See daily papers. Texts of amendments to the Dumbarton Oaks Proposals offered by the sponsoring governments: D. S. B., May 6, 1945, pp. 851—

- 16 Ecuados—Preu. Signed agreement at Rio de Janeiro, ending their 120-year-old frontier dispute. N. Y. Times, Feb. 18, 1945, p. 9.
- 16-April 11 WAR DECLARATIONS. Venezuela recognized a state of belligerency with the Axis. D. S. B., Feb. 25, 1945, p. 292. Declarations of war were made as follows: Uruguay on the Axis, Feb. 22. D. S. B., Feb. 25, 1945, p. 294. Turkey on the Axis, Feb. 23. N. Y. Times, Feb. 24, 1945, pp. 1, 6. Egypt and Syria, Feb. 26. N. Y. Times, Feb. 27, 1945, p. 1. Lebanon, Feb. 27. N. Y. Times, Feb. 28, 1945, p. 17. Korean Provisional Government (in Chungking) and Iran on Japan, Feb. 28. N. Y. Times, March 1 and 2, 1945, pp. 4 and 13; London Times, March 2, 1945, p. 13; D. S. B., March 11, 1945, p. 408. Finland formally declared war on Germany, stating war had existed since Sept. 15, 1944. N. Y. Times, March 4, 1945, p. 1; London Times, March 5, 1945, p. 3. Argentina on the Axis, March 27. D. S. B., April 1, 1945, p. 538; N. Y. Times, March 28, 1945, p. 1. Text: p. 12. Chile on Japan, April 11. N. Y. Times, April 12, 1945, p. 9.
- CANADA—UNITED STATES. Announcement made of a wartime agreement regarding military air transport routes operated by one country over territory of the other. D. S. B., Feb. 25, 1945, p. 309. Effected also a civil air transport agreement by exchange of notes. Texts: D. S. B., Feb. 25, 1945, pp. 305-308.
- 19 EL SALVADOREAN RECOGNITION. Granted by United States, Cuba and Mexico (effective March 1). N. Y. Times, Feb. 20, 1945, p. 13.
- 19 Hungara (Provisional Government). Moscow announced adoption of a Hungarian decree removing certain areas in Rumania, Czechoslovakia and Yugoslavia from Hungarian jurisdiction. N. Y. Times, Feb. 20, 1945, p. 4.
- 20 Argentina—Germany. Argentina decided to use sanctions against Germany pending indemnification for damages caused to Argentine ships. N. Y. Times, Feb. 21, 1945, p. 11.
- SUEZ CONFERENCE. White House announced that Prime Minister Churchill and President Roosevelt had met with Emperor Haile Selassie of Ethiopia, King Farouk of Egypt, King Ibn Saud of Saudi Arabia and President Kuwatly of the Syrian Republic. Text: N. Y. Times, Feb. 21, 1945, p. 8.
- 21-March 8 Inter-American Conference on Problems of War and Peace. Opened at Mexico City, Feb. 21 and elected Foreign Minister Padilla of Mexico as Chairman. N. Y. Times, Feb. 22, 1945, pp. 1, 19. Texts of President Roosevelt's message, addresses by President Avila Camacho and Secretary of State Stettinius: D. S. B., Feb. 25, 1945, pp. 273-281, 313-314. Text of invitation to the various governments: Desde Mexico (Mexico City), Feb. 15, 1945, p. 1. U. S. delegates: D. S. B., Feb. 11, 1945, pp. 192-193; N. Y. Times, Feb. 11, 1945, p. 19. A declara-

tion on reciprocal assistance and American solidarity, the Act of Chapultepec, was approved March 3. N. Y. Times, March 4, 1945, p. 1. Text: p. 25; D. S. B., March 4, 1945, pp. 339-340; Cong. Rec. (daily) March 12 and 13, 1945, pp. 2058-2059, 2154-2155; International Conciliation (N. Y.), April, 1945, pp. 335-339; Desde Mexico (Mexico City), March 15/31, 1945, no. 57/58. The Final Act was signed March 8, and 60 resolutions were approved. N. Y. Times, March 9, 1945, p. 1. Partial texts and summaries of principal resolutions: p. 12. Text of draft resolution on establishment of a general international organization: D. S. B., March 18, 1945, pp. 449-450. The Governing Board of the Pan American Union adopted a resolution authorizing Argentina to sign the Final Act of the Conference March 31. N. Y. Times, April 1, 1945, p. 16. Argentina signed April 4. N. Y. Times, April 5, 1945, p. 7; D. S. B., April 15, 1945, p. 670; P. A. U., May, 1945, p. 263. Report submitted to the Governing Board of the Pan American Union embodying text of conclusions reached: P.A.U. Cong. and Conf. Ser. no. 47.

- TURKEY—UNITED STATES. Signed lend-lease agreement at Ankara. N. Y. Times, Feb. 24, 1945, p. 6.
- 24 SWITZERLAND—UNITED STATES. Text of Acting Secretary of State Grew's statement regarding bombing and strafing of Swiss towns on February 22: D. S. B., Feb. 25, 1945, p. 309.
- 26/April 12 U.N.R.R.A.—CZECHOSLOVAKIA. Signed agreement in London for a general relief program. London Times, Feb. 27, 1945, p. 3. Signed 6 agreements on April 12, supplementing that of Feb. 26, by which relief activities will begin immediately. N. Y. Times, April 13, 1945, p. 11; London Times, April 14, 1945, p. 3.
- PHILIPPINE COMMONWEALTH—UNITED STATES. General MacArthur turned the civil government of the Philippines back to the Commonwealth in a ceremony at Manila. Text of address: N. Y. Times, Feb. 27, 1945, pp. 1, 12. Text of address and summary of President Osmeña's reply: Cong. Rec. (daily), Feb. 27, 1945, p. 1536.
- 27—March 29 CRIMBA CONFERENCE. Text of Prime Minister Churchill's report to the House of Commons: N. Y. Times, Feb. 28, 1945, pp. 14-15; London Times, Feb. 28, 1945, pp. 5-7. Text of President Roosevelt's report of March 1: Cong. Rec. (daily), March 1, 1945, pp. 1652-1656; N. Y. Times, March 2, 1945, p. 12. On March 29 the White House announced a secret agreement whereby Russia and the United States would each have 3 votes in the proposed Assembly of the United Nations. Text: N. Y. Times, March 30, 1945, pp. 1, 5.
- FRANCE (Provisional Government)—United States. Announced signatures of (1) master lend-lease agreement, (2) reciprocal aid agreement, (3) agreement under sect. 3 (C) of the Lend-lease Act. Text of announcement: N. Y. Times, March 1, 1945, p. 12.

March, 1945

- 1 CANADA—CZECHOSLOVAKIA (in exile). Signed an agreement providing for a 15-million dollar credit to the Czechoslovak Government. N. Y. Times, March 3, 1945, p. 4; B. I. N., March 17, 1945, p. 278.
- FRANCE (Provisional Government)—ITALY. Formal resumption of official relations was announced. N. Y. Times, March 2, 1945, p. 4; London Times, March 2, 1945, p. 3.
 - 1 U.N.R.R.A.—Greece. Signed formal agreement at Athens. London Times, March 2, 1945, p. 3.
 - 1/April 1 Polish (Provisional Government) Recognition. Text of statement by

- Foreign Secretary Eden in which he said the British Government had no intention of recognizing the "Lublin Committee": Polish Review (N. Y.), March 15, 1945, p. 2. Yugoslavia announced its recognition on April 1. N. Y. Times, April 2, 1945, p. 10; B. I. N., April 14, 1945, p. 380.
- YUGOSLAVIA (in exile). King Peter appointed a Regency Council on March 2. London Times, March 3, 1945, p. 3.
- 3 Arab Nations. At the closing session of the Conference which opened Feb. 14 at Cairo, delegates signed the draft constitution providing for an Arab League. N. Y. Times, March 4, 1945, p. 11; B. I. N., March 3 and 17, 1945, pp. 230, 279.
- 4 CZECHOSLOVAKIA (in exile)—SWITZERLAND. Announcement was made of decision to re-establish diplomatic relations. N. Y. Times, March 5, 1945, p. 7; London Times, March 5, 1945, p. 4.
- 4 SAUDI ARABIA—UNITED STATES. Announcement made of Arabian plan to establish an information office in Washington. N. Y. Times, March 5, 1945, p. 11.
- 6-15 RUMANIA. A new Cabinet, headed by Petre Groza, was set up March 3. N. Y. Times, March 7, 1945, p. 6. On March 14 Foreign Secretary Eden of Great Britain announced that his country, the United States and Russia were exchanging communications about the general situation in Rumania. N. Y. Times, March 15, 1945, pp. 1, 6. The U. S. Department of State announced it had requested consultations with Great Britain and Russia in accordance with the agreement reached at the Crimea Conference. Text of statement: London Times, March 16, 1945, p. 4; N. Y. Times, March 16, 1945, p. 9.
- YUGOSLAVIA. The new Cabinet was sworn in. London Times, March 8, 1945, p. 3;
 N. Y. Times, March 8, 1945, p. 5. This is the first Cabinet under the united Yugoslav Government.
- 8 Australia—United States. Signed agreement at Canberra regarding certain problems of marine transportation and litigation. D. S. B., April 8, 1945, p. 621.
- 8 Great Britain—Sweden. The British Government published terms of a monetary agreement. N. Y. Times, March 9, 1945, p. 4; D. S. B., April 1, 1945, p. 585. Summary: London Times, March 9, 1945, p. 9. Text: Sweden no. 1 (1945), Cmd. 6604.
- 8 ITALY—UNITED STATES. Alberto Tarchiani, newly appointed Italian Ambassador, presented his letters of credence. D. S. B., March 11, 1945, pp. 422-423.
- 9 Australia—France (Provisional Government). Australia announced completion of arrangements for an exchange of Ministers. London Times, March 10, 1945, p. 3.
- 9 PHILIPPINE COMMONWEALTH. The new Cabinet was sworn in. N. Y. Times, March 10, 1945, p. 5.
- 9 U.N.R.R.A.—ITALY. Terms of an agreement announced whereby Italy will receive 50 million dollars in relief. London *Times*, March 10, 1945, p. 3. Summary of principal points of agreement: D. S. B., April 1, 1945, p. 543.
- FRENCH INDO-CHINA—JAPAN. The Japanese army took over complete control, although the area had been occupied since July, 1941. N. Y. Times, March 10, 1945, p. 15.
- TRANSYLVANIA. The Rumanian Government of Prime Minister Groza received permission from the Soviet Government to take over control and administration of northern Transylvania in accordance with terms of the Rumanian armistice. N. Y. Times, March 11, 1945, pp. 1, 28.

- AUSTRIA—UNITED STATES. Statement of Acting Secretary of State Grew on United States' attitude toward Austria: D. S. B., March 11, 1945, p. 397.
- 12/April 28 Reparation Commission. Isador Lubin was appointed U. S. member on March 12. N. Y. Times, March 13, 1945, p. 10; D. S. B., March 18, 1945, p. 434. On April 28 Edwin W. Pauley was appointed U. S. member, to be associated with Mr. Lubin. N. Y. Times, April 28, 1945, p. 9; D. S. B., April 29, 1945, p. 807. Members of the staff of the Commission: D. S.-B., May 20, 1945, pp. 931-932.
- SOVIET RUSSIA—VENEZUELA. Venezuelan Government announced the two countries had agreed to establish diplomatic and consular relations. N. Y. Times, March 14, 1945, p. 8.
- DODEGANESE ISLANDS. Three islands proclaimed their union with Greece, ending 30 years of Italian sovereignty. N. Y. Times, March 16, 1945, p. 3.
- 17-22 Arab League. Preliminary conference of representatives from Egypt, Iraq, Lebanon, Saudi Arabia, Syria, and Trans-Jordan opened at Cairo, to prepare the way for the plenary session in April, which in turn will plan Arab campaign at United Nations Conference in San Francisco. London Times, March 19, 1945, p. 3; N. Y. Times, March 18, 1945, p. 18. The Arab League Charter was signed March 22 by 6 Arab states. It provides a place for Palestine in the membership council. N. Y. Times, March 23, 1945, p. 8; London Times, March 23, 1945, p. 3. Brief summary: B. I. N., March 31, 1945, p. 319-320.
- 19 Bolivia Soviet Russia. Bolivian Foreign Minister announced Bolivia had decided to establish diplomatic relations with Russia. N. Y. Times, March 20, 1945, p. 5.
- 20 SOVIET RUSSIA—TURKEY. Announcement of Soviet desire to terminate their treaty of amity and neutrality [signed Dec. 17, 1925] in view of new conditions. N. Y. Times, March 21, 1945, p. 3; London Times, March 22, 1945, p. 3.
- POLISH NATIONAL COUNCIL. President Razkiewicz of the London Government dissolved the Council in order to form a "more representative body," including Poles from France, the United States and the homeland. N. Y. Times, March 22, 1945, p. 12.
- WAR CRIMES. The Swedish Minister of Justice announced his Government did not wish to offer sanctuary to war criminals, but would be just in its discrimination. B. I. N., March 31, 1945, p. 330.
- JAPAN—SPAIN. Spain protested strongly against Japanese atrocities in the Philippine Islands. N. Y. Times, March 24, 1945, p. 10, London Times, March 26, 1945, p. 3.
- 25 U.N.R.R.A.—YUGOSLAVIA. Announcement of signature at Belgrade of a relief agreement. London *Times*, March 26, 1945, p. 3.
- 26 LLOYD GEORGE, DAVID. Earl of Dwyfor died at his home, aged 82 years. London Times, March 27, 1945, p. 4.
- France (Provisional Government)—Great Britain. Signed trade agreement in Paris. N. Y. Times, March 28, 1945, p. 8; London Times, March 28, 1945, p. 2. Summary: London Times, March 29, 1945, p. 3. Text: France, no. 1 (1945), Cmd. 6613.
- 27 Jews in Hungary. Moscow radio announced that the Hungarian Provisional Government had issued a special order repealing all anti-Jewish laws. N. Y. Times, March 28, 1945, p. 8; B. I. N., April 14, 1945, p. 378.

- SOUTH SEA ISLANDS. French Government announced it had accorded French nationality to about 20,000 natives of the French South Sea Islands. N. Y. Times, March 29, 1945, p. 13.
- 30 POLAND (Provisional Government)—YUGOSLAVIA. Marshal Tito decided to establish diplomatic relations. N. Y. Times, March 31, 1945, p. 4.
- 31 Danzig. Polish Provisional Government announced creation of the Province of Danzig, which will include the city of Danzig and several cities of the former "Polish Corridor." N. Y. Times, April 1, 1945, p. 12.

April, 1945

- 1 United Nations Commission for the Investigation of War Crimes. Announcement was made that Hitler's name headed one list of war criminals. It denied that political leaders would not be treated as criminals. N. Y. Times, April 2, 1945, p. 6.
- Brazif—Soviet Russia. Exchanged notes at Washington providing for the reestablishment of diplomatic relations, broken off in 1918. N. Y. Times, April 3, 1945, p. 10; London Times, April 3, 1945, p. 3.
- 4-13 British Commonwealth Conference. Members of the British, Dominion, and Indian delegations to the United Nations Conference, to be held at San Francisco, opened meetings in London on April 4, to discuss a policy on the proposed world security organization. N. Y. Times, April 5, 1945, p. 13; London Times, April 5, 1945, p. 4. The Dominions Office announced April 13 that the discussions were at an end. It was agreed that the Dumbarton Oaks proposals provided a basis for the charter of the organization, but called for "clarification, improvement and expansion." B. I. N., April 28, 1945, p. 414.
- 5 China—Sweden. Signed treaty at Chungking, whereby Sweden relinquished extraterritorial rights and other special privileges in China. N. Y. Times, April 6, 1945, p. 9.
- 5 Great Britain—Poland. The British Government published a secret protocol to the Aug. 25, 1939 treaty in which Great Britain guaranteed assistance to Poland against Germany. In the Protocol it is stated that aggression by a "European Power" is understood to mean Germany. N. Y. Times, April 6, 1945, p. 7; London Times, April 6, 1945, p. 3. Text: Poland no. 1 (1945). Cmd. 6616.
- JAPAN—Soviet Russia. Russia denounced neutrality pact, signed April 13, 1941.
 Russian Embassy. Information Bulletin, April 14, 1945, p. 6; N. Y. Times, April 6, 1945, pp. 1, 3. Text of Russian statement: p. 4; London Times, April 6, 1945, p. 4; D. S. B., April 29, 1945, p. 811. Text of pact: p. 812.
- 5-7 CZECHOSLOVAKIA. New Government held first meeting at Kosicĕ on April 5. Summary of the program: News Flashes from Czechoslovakia (Chicago), Release no. 287, April 30, 1945. President Roosevelt congratulated President Beneš, April 6, on his return to Czechoslovak soil. D. S. B., April 8, 1945, p. 599. On April 7 the formation of a new Cabinet was announced. Personnel: C. S. Monitor, April 7, 1945, p. 1.
- France (Provisional Government)—United States. Signed agreement regarding visas for civilian travel. D. S. B., April 29, 1945, p. 813.
- 8 Austria—Sover Russia. Moscow radio broadcast Soviet declaration that Russia considered the people of Austria as friends and had no intention of changing its social system or territorial extent. Text: N. Y. Times, April 9, 1945, p. 3.
- 9 ARGÉNTINA—UNITED STATES. Secretary of State Stettinius announced decision to resume normal diplomatic relations. N. Y. Times, April 10, 1945, pp. 1, 15.

- 9-20 UNITED NATIONS COMMITTEE OF JURISTS. The Committee opened meetings in Washington on April 9. N. Y. Times, April 10, 1945, pp. 1, 9; D. S. B., April 15, 1945, pp. 672-674. List of governments to be represented: D. S. B., April 8, 1945, p. 643. Signed Record of the meetings on April 20. D. S. B., April 22, 1945, p. 759. The Rapporteur was Jules Basdevant.
- JAPAN, SPAIN. Diplomatic relations severed by Spain. N. Y. Times, April 12, 1945, pp. 1, 9.
- 11 POLAND (Provisional Government)—Soviet Russia. Announcement that a mass population exchange is under way in Poland, the transfer having been arranged by tripartite negotiations between the Polish Provisional Government and the autonomous administrations of White Russia and the Ukraine. N. Y. Times, April 12, 1945, p. 2.
- SOVIET RUSSIA—YUGOSLAVIA. Signed twenty-year treaty of friendship and military alliance at Moscow. Summary of 6 articles: N. Y. Times, April 13, 1945, p. 13; London Times, April 13, 1945, p. 3. Text: D. S. B., April 22, 1945, pp. 774-775; Free Europe (London), April 20, 1945, pp. 120-121.
- PRISONERS OF WAR. U. S. War and State Departments issued joint statement accusing Germany of cruel treatment of United States prisoners of war. Text: N. Y. Times, April 13, 1945, p. 13; D. S. B., April 15, 1945, pp. 683-684.
- 12 ROOSEVELT, FRANKLIN D. Died at Warm Springs, Ga. N. Y. Times, April 13, 1945, p. 1.
- TRUMAN, HARRY S. Took oath of office as President of the United States. N. Y. Times, April 13, 1945, p. 1.
- 13 France (Provisional Government)—United States. U. S. Treasury Department issued a general license under its freezing controls, which would permit all financial transactions involved in trade with France. D. S. B., April 29, 1945, p. 813.
- MIKOLAJCZYK, STANISLAW. Stanislaw Mikolajczyk, former Premier of Polish Government in London, in a statement, approved future relations with the Soviet based on plans formulated at the Crimea Conference. N. Y. Times, April 16, 1945, p. 16.
- 16 ALBANIA—ALLIED POWERS. Announced signature of a military agreement for the introduction of relief into Albania. London Times, April 17, 1945, p. 3.
- 16 Great Britain—United States. Signed two conventions regarding avoidance of double income taxes and prevention of fiscal evasion, one with respect to taxes on income, the other on estates of deceased persons. D. S. B., April 29, 1945, p. 834. Texts: Cong. Rec. (daily), April 26, 1945, pp. 3919-3923; 79th Cong., 1st sess. Ex. D and E.
- 17 Belgium—United States. Exchanged notes at Washington regarding lend-lease. Texts: D. S. B., April 22, 1945, pp. 763-769.
- 17 LEND-LEASE PACT. United States, Great Britain, China and Russia signed the 4th Lend-lease Protocol at Ottawa. N. Y. Times, April 21, 1945, p. 6; D. S. B., April 22, 1945, p. 723.
- 17 South Africa—United States. Effected two agreements by exchange of notes at Washington, by one of which all forms of mutual aid have been placed on a cash basis; by the other provision has been made for an expansion of production, employment, trade, etc. Texts: D. S. B., April 22, 1945, pp. 769-771.
- 19 Guatemala—Sovier Russia. Established diplomatic relations by exchange of notes at Washington. N. Y. Times, April 20, 1945, p. 9.

- 19 Lebanon—United States. Dr. Charles Malik presented his letters of credence as first Minister from Lebanon. D. S. B., April 22, 1945, p. 776.
- POLAND (in exile)—Soviet Russia. Polish Government handed a memorandum to the British and United States Governments dealing with Polish-Russian relations and with the San Francisco conference. Text: London Times, April 24, 1945, p. 3; Free Europe (London), May 4, 1945, p. 138.
- 21/May 11 POLAND (Provisional Government)—Soviet Russia. Signed at Moscow a "treaty of friendship, mutual assistance and postwar collaboration." N. Y. Times, April 22, 1945, pp. 1, 10. Text: Russian Embassy. Information Bulletin (Washington), April 26, 1945, pp. 1-2; London Times, April 23, 1945, p. 3; Free Europe (London), May 4, 1945, pp. 127-138. Ratified by the Presidium of the Supreme Soviet Council on May 11. N. Y. Times, May 12, 1945, p. 1.
- 23 CZECHOSLOVAKIA—GERMANY. Czechoslovak Government at Kosice issued order to the people of Moravia and Bohemia to fight as guerrillas and to show no pity towards German forces on Czech soil. Text of order: N. Y. Times, April 24, 1945, p. 3.
- PRISONERS. The governments of the United Kingdom, United States and Soviet Russia on behalf of the United Nations issued a warning to Germany against the maltreatment of prisoners. N. Y. Times, April 24, 1945, pp. 1, 8. Text: p. 6; D. S. B., April 29, 1945, p. 811.
- 23 United Nations Commission for the Investigation of War Crimes. Lord Wright, the Chairman, issued statement on the jurisdiction of the Commission. Text: London *Times*, April 23, 1945, p. 2.
- 23/May 1 Prisoners of War. On April 23 the Allies accepted German offer to leave prisoners in their camps when German armies withdrew. N. Y. Times, April 24, 1945, pp. 1, 6; D. S. B., April 29, 1945, p. 810. The United States Department of State announced on May 1 the receipt of assurances from German Government that American prisoners would be left in their camps for liberation by advancing armies. D. S. B., May 6, 1945, p. 866.
- 26 Petain, Marshal Henri. Entered France from Germany via Switzerland to stand trial at a future date. N. Y. Times, April 27, 1945, p. 8.
- WORLD WAR. Texts of President Truman's announcement that Anglo-American and Soviet forces had met in Germany [at Torgau] on April 26; Cong. Rec. (daily), April 27, 1945, p. 3972; N. Y. Times, April 28, 1945, p. 3. Texts of British and Soviet announcements: p. 3.
- 28 Austria (Provisional Government). Dr. Karl Renner formed a new provisional government. N. Y. Times, April 30, 1945, p. 1. Personnel: p. 4.
- 28 Mussolini, Benito. Was executed by Italian patriots in Dongo, near Lake Como. N. Y. Times, April 30, 1945, p. 1.
- 29 CZECHOSLOVAKIA—SWEDEN. Announcement was made that the Czechoslovak Government had agreed to re-establish diplomatic relations. N. Y. Times, April 29, 1945, p. 21.
- 29 France (Provisional Government). Held elections, the first since 1937. N. Y. Times, April 30, 1945, p. 1.
- 30 The Netherlands—United States. Signed two lend-lease agreements. N. Y. Times, May 1, 1945, p. 15. These agreements supplement the Master Agreement

of July 8, 1942 and supersede the agreement on reverse lend-lease of June 14, 1943. D. S. B., May 6, 1945, pp. 876-877.

May, 1945

- HITLER, ADOLF. Hamburg radio reported death of Hitler and his succession as Führer by Admiral Karl Doenitz. N. Y. Times, May 2, 1945, p. 1. Text of Doenitz's order of the day: p. 4.
- WORLD WAR. German armies surrendered in Italy and western Austria. N. Y. Times, May 3, 1945, p. 1. Summary of surrender terms: p. 3. Text of announcement and terms imposed in the Mediterranean area: London Times, May 3, 1945, p. 4.
- WORLD WAR. Text of chronological account of surrender offer by Heinrich Himmler, as released by U. S. Department of State: N. Y. Times, May 3, 1945, p. 12; D. S. B., May 6, 1945, p. 863.
- 2-8 World War. Berlin fell to Russian forces May 2. N. Y. Times, May 3, 1945, p. 1. German forces in northern Germany. The Netherlands and Denmark surrendered May 5, effective at 2 a.m. N. Y. Times, May 5, 1945, p. 1. Unconditional surrender terms were signed at Rheims, effective May 8 at 12:01 a.m. N. Y. Times, May 8, 1945, p. 1. Final articles of capitulation were signed at Berlin on May 8. N. Y. Times, May 9, 1945, p. 1. Terms of Rheims surrender: p. 3. Text of President Truman's radio address and Proclamation: pp. 6, 5; D. S. B., May 13, 1945, pp. 885-886. Text of Prime Minister Churchill's Proclamation and King George's broadcast: N. Y. Times, May 9, 1945, p. 8; London Times, May 9, 1945, pp. 4, 5. The Act of Surrender, signed in Berlin, was virtually identic with that signed at Rheims. D. S. B., May 13, 1945, p. 885; N. Y. Times, May 9, 1945, p. 3. Text of Berlin surrender terms: London Times, May 11, 1945, p. 4.
- 2/16 WAR CRIMES. President Truman designated Associate Justice Robert H. Jackson as chief of counsel for the United States before an international military tribunal to be set up to try war crimes and atrocity cases. N. Y. Times, May 3, 1945, p. 9; D. S. B., May 6, 1945, pp. 866-867. On May 16 the White House announced that the decision as to which criminals should be tried by the proposed tribunal would be left to the prosecutors. Three assistants to Mr. Jackson were announced. N. Y. Times, May 17, 1945, p. 4.
- 3 OPEN CITY (Prague). Admiral Karl Doenitz declared Prague a "hospital city." N. Y. Times, May 4, 1945, p. 4.
- 3 SOVIET RUSSIA—UNITED STATES. Department of State issued announcement regarding Soviet allegations of U. S. non-compliance with the Yalta agreement concerning the treatment and repatriation of liberated Allied prisoners of war. Text: D. S. B., May 6, 1945, p. 864.
- 5 PHILIPPINE INDEPENDENCE. Statement by President Truman on independence. Text: D. S. B., May 6, 1945, p. 867.
- 6 Germany—Portugal. Portugal broke off diplomatic relations. N. Y. Times, May 7, 1945, p. 5.
- 7 GERMANY—SPAIN. Spanish Foreign Minister declared the German Government non-existent and diplomatic relations are therefore severed. N. Y. Times, May 8, 1945, p. 11.
- 7 Germany—Sweden. Sweden announced severance of diplomatic relations. N. Y. Times. May 8, 1945, p. 8.

- 8 Inland Transfort. Representatives of Belgium, France, Luxembourg, The Netherlands, Norway, Great Britain and the United States signed agreement in London, establishing a Provisional Organization for European Inland Transport. Text: D. S. B., May 13, 1945, p. 910.
- 9 DENMARK. King Christian proclaimed his country's liberation. N. Y. Times, May 10, 1945, p. 2.
- 12 United Nations Commission for the Investigation of War Crimes. Colonel Joseph V. Hodgson was appointed as U. S. Commissioner, succeeding Herbert C. Pell, who resigned last December. N. Y. Times, May 13, 1945, p. 8.
- 13 Churchill, Winston. Text of address reviewing his five years in office: N. Y. Times, May 14, 1945, p. 4.
- 14 DENMARK—JAPAN. Denmark announced diplomatic relations had been broken off. N. Y. Times, May 15, 1945, p. 2.
- 14 LEND-LEASE. Text of Acting Secretary of State Grew's statement on aid to Soviet Russia: N. Y. Times, May 15, 1945, p. 8.
- 14 TRESTE. Announcement was made of notes sent by Great Britain and the United States to Marshal Tito, stating that the city must remain under the Allies' control until its future shall be decided at the peace conference. N. Y. Times, May 15, 1945, p. 1.
- ATROCTTES. Text of report submitted by Joint Committee of the U. S. Senate and House of Representatives: Cong. Rec. (daily) May 15, 1945, pp. 4654-4659; 79th Cong. 1st sess. Senate. Doc. 47.
- Axis Powers—Japan. The Japanese Cabinet decided to abrogate all treaties between Japan and other European countries, including the Tripartite pact of Sept. 27, 1940, in view of the surrender of Germany and Italy. N. Y. Times, May 16, 1945, p. 2.

MULTIPARTITE CONVENTIONS

Air Services Transit Agreement. Chicago, Dec. 7, 1944.
Acceptances:

Czechoslovakia. April 18, 1945. D. S. B., May 6, 1945, p. 873.

Liberia. March 17, 1945. D. S. B., May 6, 1945, p. 878.

New Zealand. April 18, 1945. D. S. B., May 6, 1945, p. 874.

Poland (in exila) Marth 20, 1945. D. S. B. April 8, 1945, p. 844.

Poland (in exile). March 20, 1945. D. S. B., April 8, 1945, p. 644. Ratification:

Poland (in exile). March 20, 1945. D. S. B., April 8, 1945, p. 644. Signatures:

Belgium. April 8, 1945. D. S. B., April 15, 1945, pp. 714-715.

Costa Rica. March 10, 1945. D. S. B., March 11, 1945, p. 426.

Cuba. April 20, 1945. D. S. B., May 6, 1945, p. 874.

Czechoslovakia. April 18, 1945. D. S. B., May 6, 1945, p. 873.

Ethiopia. March 22, 1945. D. S. B., March 25, 1945, p. 478.

Iceland. April 4, 1945. D. S. B., May 6, 1945, p. 873.

AIR TEANSPORT AGREEMENT. Chicago, Dec. 7, 1944.

Acceptance:

Liberia. March 17, 1945. D. S. B., May 6, 1945, p. 873.

Signatures:

Costa Rica. March 10, 1945. D. S. B., March 11, 1945, p. 426. Cuba. April 20, 1945. D. S. B., May 6, 1945, p. 874. Ethiopia. March 22, 1945. D. S. B., March 25, 1945, p. 478. Iceland. April 4, 1945. D. S. B., May 6, 1945, p. 873.

AVIATION. Interim Agreement. Chicago, Dec. 7, 1944.

Acceptances:

Belgium. April 11, 1945. D. S. B., May 6, 1945, p. 873. Czechoslovakia. April 18, 1945. D. S. B., May 6, 1945, p. 873. Egypt. April 26, 1945. D. S. B., May 6, 1945, p. 874. Ethiopia. March 22, 1945. D. S. B., March 25, 1945, p. 478. Liberia. March 17, 1945. D. S. B., May 6, 1945, p. 873. New Zealand. April 18, 1945. D. S. B., May 6, 1945, p. 874. Poland (in exile). March 20, 1945. D. S. B., April 8, 1945, p. 644. Ratification:

Poland (in exile). March 20, 1945. D. S. B., April 8, 1945, p. 644. Signatures:

Belgium. April 9, 1945. D. S. B., April 15, 1945, pp. 714-715. Costa Rica. March 10, 1945. D. S. B., March 11, 1945, p. 426. Cuba. April 20, 1945. D. S. B., May 6, 1945, p. 874. Czechoslovakia. April 18, 1945. D. S. B., May 6, 1945, p. 873. Ethiopia. March 22, 1945. D. S. B., March 25, 1945, p. 478.

AVIATION CONVENTION. Chicago, Dec. 7, 1944.

Acceptance:

Poland (in exile). March 20, 1945. D. S. B., April 8, 1945, p. 644. Ratification:

Poland (in exile). March 20, 1945. D. S. B., April 8, 1945, p. 644. Signatures:

Belgium. April 9, 1945. D. S. B., April 15, 1945, pp. 714-715. Costa Rica. March 10, 1945. D. S. B., March 11, 1945, p. 426. Cuba. April 20, 1945. D. S. B., May 6, 1945, p. 874. Czechoslovakia. April 18, 1945. D. S. B., May 6, 1945, p. 873.

CIVIL WAR. Havana, Feb. 20, 1928.

Ratification:

Honduras. March 27, 1945. D. S. B., May 6, 1945, p. 874.

Ratification deposited:

Honduras. April 16, 1945. D. S. B., May 6, 1945, p. 874.

INTER-AMERICAN INSTITUTE OF AGRICULTURAL SCIENCES. Washington, Jan. 15, 1944.

Ratification deposited:

Honduras. March 19, 1945. D. S. B., April 8, 1945, p. 656.

PRISONERS OF WAR. Geneva, July 27, 1929.

Adhesion: (effective Sept. 5, 1945)

Argentina. D. S. B., May 6, 1945, p. 878.

RED CROSS. Geneva, July 27, 1929.

Adhesion: (effective Sept. 5, 1945)

Argentina. D. S. B., May 6, 1945, p. 878.

Sanitary Convention. Paris, June 21, 1926. Amendment. Washington, Jan. 5, 1945. Note: This convention is known as the International Sanitary Convention, 1944, as it was opened for signature on Dec. 15, 1944; no signature was affixed until Jan. 5, 1945. Accession (with reservation):

Australia. D. S. B., May 20, 1945, p. 941.

Application to:

British colonies, protectorates and mandated territories. Feb. 21, 1945. U.N.R.R.A. Epidemiological Information Bulletin (Washington), March 15, 1945, pp. 205-206. Text: Cong. Rec. (daily), March 13, 1945, pp. 2147-2149, U.N.R.R.A. Epidemiological Information Bulletin, Jan. 15, 1945, pp. 13-24.

Came into force Jan. 15, 1945. D. S. B., May 20, 1945, p. 941.

Sanitary Convention for Air Navigation. The Hague, April 12, 1983. Amendment, Washington, Jan. 5, 1945.

Note: This convention is known as the International Sanitary Convention for Aerial Navigation, 1944, as it was opened for signature Dec. 15, 1944; no signature was affixed until Jan. 5, 1945.

Accession (with reservation):

Australia. D. S. B., May 20, 1945, p. 941.

Application to:

British colonies, protectorates and mandated territories. Feb. 21, 1945. U.N.R.R.A. Epidemiological Information Bulletin (Washington), March 15, 1945, p. 206.

Text: U.N.R.R.A. Epidemiological Information Bulletin, Jan. 15, 1945, pp. 33-47; Cong. Rec. (daily), March 13, 1945, pp. 2149-2152.

Came into force Jan. 15, 1945. D. S. B., May 20, 1945, p. 941.

SUGAR PRODUCTION AND MARKETING. London, May 6, 1937.

Promulgation:

United States. April 20, 1945. D.S.B., April 29, 1945, p. 836.

SUGAR PRODUCTION AND MARKETING. Protocol. London, July 22, 1942.

Promulgation:

United States. April 20, 1945. D. S. B., April 29, 1945, p. 836.
SUGAR PRODUCTION AND MARKETING. Protocol. London, Aug. 81, 1944.

Promulgation:

United States. April 20, 1945. D. S. B., April 29, 1945, p. 836. U.N.R.R.A. Washington, Nov. 9, 1943.

Ratifications:

Bolivia. Jan. 10, 1945. D. S. B., March 18, 1945, p. 461.

Colombia. Feb. 20, 1945. D. S. B., March 25, 1945, p. 478.

Poland (in exile). Jan. 30, 1945. D. S. B., March 11, 1945, p. 428.

Ratifications deposited:

Bolivia. March 13, 1945. D. S. B., March 18, 1945, p. 461.

Colombia. March 16, 1945. D. S. B., March 25, 1945, p. 478.

Poland (in exile). March 7, 1945. D. S. B., March 11, 1945, p. 426.

United Nations Declaration. Washington, Jan. 1, 1942.

Adherences:

Lebanon. March 1, 1945. D. S. B., April 1, 1945, p. 575.

Saudi Arabia. March 1, 1945. D. S. B., March 11, 1945, p. 408.

Syria. March 1, 1945. D. S. B., April 1, 1945, p. 575.

Uruguay. Feb. 24, 1945. D. S. B., Feb. 25, 1945, p. 294.

Venezuela. Feb. 20, 1945. D. S. B., Feb. 25, 1945, pp. 292-294.

Signatures:

Egypt. Feb. 28, 1945. D. S. B., March 4, 1945, p. 374; N. Y. Times, March 1, 1945, p. 13.

Lebanon. April 12, 1945.

Saudi Arabia. April 12, 1945.

Syria. April 12, 1945. D. S. B., April 15, 1945, pp. 681-682.

Turkey. Feb. 28, 1945. D. S. B., March 4, 1945, p. 374; N. Y. Times, March 1, 1945, p. 13.

Venezuela. Feb. 20, 1945. N. Y. Times, Feb. 21, 1945, p. 11; D. S. B., Feb. 25, 1945, pp. 292-293.

List of signatures and dates: N. Y. Times, March 6, 1945, p. 9.

DOROTHY R. DART

JUDICIAL DECISIONS

REPUBLIC OF MEXICO v. HOFFMAN

SUPREME COURT OF THE UNITED STATES*

[February 5, 1945.]

The courts may not allow immunity from jurisdiction in rem to a vessel owned by a foreign government but not in its possession and service where the political branch of our government, though consulted, has not recognized such immunity.

Mr. Chief Justice STONE delivered the opinion of the Court.

The question is whether, in the absence of the adoption of any guiding policy by the Executive branch of the government the federal courts should recognize the immunity from a suit in rem in admiralty of a merchant vessel solely because it is owned though not possessed by a friendly foreign government.

Respondent, owner and master of the Lottie Carson, an American fishing vessel, filed a libel in rem in the district court for southern California against the Baja California, her engines, machinery, tackle and furniture, for damage alleged to have been caused when the Baja California negligently caused her tow to collide with the Lottie Carson in Mexican waters. The Mexican Ambassador to the United States, acting in behalf of his government, thereupon filed in the district court a suggestion that the Baja California at all the times mentioned in the libel and at the time of her seizure was owned by the Republic of Mexico and in its possession, and engaged in the transportation of cargoes between the ports of the Republic of Mexico and elsewhere. Libellant put in issue the allegations of the suggestion that title to the Baja California was at any time in the Mexican government and denied that she was in that government's possession, public service or use. Trial of these issues proceeded upon stipulated evidence.

In the meantime the United States Attorney for the District, acting under direction of the Attorney General, filed in the district court a communication from the Secretary of State to the Attorney General, in which the State Department called attention to the claim of the Mexican government, already detailed. The Department took no position with respect to the asserted immunity of the vessel from suit other than to cite Ervin v. Quintanilla, 99 F. 2d 935, and Compania Espanola v. The Navemar, 303 U. S. 68. In Ervin v. Quintanilla, supra, the asserted immunity from suit of The San Ricardo, a vessel of the Mexican government, was allowed by the court on the ground that at the time of her seizure upon a libel in rem she was in the possession and service of that government. And in Compania Espanola v. The Navemar, supra, the State Department having failed to

^{*} No. 455. October Term, 1944.

recognize the claimed immunity of the Spanish vessel Navemar, alleged to have been expropriated by and in the possession of the friendly Republic of Spain at the time of her seizure upon a libel in rem, this Court denied the claimed immunity on the ground that the libelled vessel was not shown to have been in the possession and public service of the foreign government.

The district court was unable to find, under the rule of *The Navemar*, supra, any ground for relinquishing the jurisdiction over the vessel, and accordingly denied the claim of immunity. The Mexican government then filed an answer to the libel by which it put in issue the material allegations of the libel on the merits and renewed its claim of sovereign immunity from the suit. The court then proceeded with the trial on the merits.

A second suggestion was then filed by the United States Attorney at the direction of the Attorney General, transmitting a communication from the State Department, stating that it accepted as true the contention that the Baja California was the property of the Mexican government and that it recognized a statement by the Mexican Ambassador that his government would meet any liability decreed against the vessel as a binding international undertaking. The district court denied the claim of immunity, finding that the ship was in "the possession, operation, and control" of the Compania Mexicana de Navigacion del Pacifico, S. de R. L. This was a privately owned and operated Mexican corporation engaged in the commercial carriage of cargoes for hire for private shippers. On the merits the district court gave judgment for the libellant.

The Circuit Court of Appeals for the Ninth Circuit affirmed, 143 F. 2d 854, holding on the authority of *The Navemar*, supra, and *The Katingo Hadjipatera*, 119 F. 2d 1022, that the Baja California, although owned by the Mexican government, was not immune from suit because not in its possession and service. We granted certiorari,—U. S.—, on a petition which presented the question whether title of the vessel without possession in the Mexican government is sufficient to call for judicial recognition of the asserted immunity.

The decisions of the two courts below that the vessel was not in the possession or service of the Mexican government are supported by evidence and call for no extended review here. It is sufficient that it appears that before the injury to the Lottie Carson the Baja California was delivered by the Mexican government to the privately owned and operated Mexican corporation under a contract for a term of five years. As provided by the contract the corporation was to operate the vessel at its own expense in a private freighting venture on the high seas between Mexican ports and between them and foreign ports, and did so operate the vessel until her seizure upon the libel. The officers and crew were selected, controlled and paid by the corporation. For the use of the vessel the corporation agreed to pay to the Mexican government fifty per cent of the net profits of operations but undertook to bear all net losses.

The principal contention of petitioner is that our courts should recognize the title of the Mexican government as a ground for immunity from suit even though the vessel was not in the possession and public service of that gov-Ever since The Exchange, 6 Cranch. 116, this Government has recognized such immunity from suit, of a vessel in the possession and service of a friendly foreign government, L'Invincible, 1 Wheat. 238, 252; The Divina Pastora, 4 Wheat. 52, 64; United States v. Cornell Steamboat Co., 202 U. S. 184, 190; Ex parte Muir, 254 U. S. 522, 531-533; The Pesaro, 255 U. S. 216, 219; Ex parte State of New York, 256 U.S. 503, 510; Compania Espanola v. The Navemar, supra, 74; Ex parte Peru, 318 U.S. 578, 588, a practice which seems to have been followed without serious difficulties to the courts or embarrassment to the executive branch of the government. And in The Exchange, Chief Justice Marshall introduced the practice, since followed in the federal courts, that their jurisdiction in rem acquired by the judicial seizure of the vessel of a friendly foreign government, will be surrendered on recognition, allowance and certification of the asserted immunity by the political branch of the government charged with the conduct of foreign affairs when its certificate to that effect is presented to the court by the Attorney General. United States v. Lee, 106 U.S. 196, 209; Ex parte Muir, supra, 533; The Pesara, supra, 217; Compania Espanola v. The Navemar, supra, 74; Ex parte Peru, supra, 588. This practice is founded upon the policy recognized both by the Department of State and the courts that the national interests will be best served when controversies growing out of the judicial seizure of vessels of friendly foreign governments are adjusted through diplomatic channels rather than by the compulsion of judicial proceedings. Compania Espanola v. The Navemar, supra; Ex parte Peru, supra.

In the absence of recognition of the claimed immunity by the political branch of the government, the courts may decide for themselves whether all the requisites of immunity exist. That is to say, it is for them to decide whether the vessel when seized was that of a foreign government and was of a character and operated under conditions entitling it to the immunity in conformity to the principles accepted by the department of the government charged with the conduct of our foreign relations. See Ex parte Peru, supra, 588.

Every judicial action exercising or relinquishing jurisdiction over the vessel of a foreign government has its effect upon our relations with that government. Hence it is a guiding principle in determining whether a court should exercise or surrender its jurisdiction in such cases, that the courts should not so act as to embarrass the executive arm in its conduct of foreign affairs. "In such cases the judicial department of this government follows the action of the political branch and will not embarrass the latter by assuming an antagonistic jurisdiction." United States v. Lee, supra, 209; Ex parte Peru, supra, 588.

It is therefore not for the courts to deny an immunity which our govern-

ment has seen fit to allow, or to allow an immunity on new grounds which the government has not seen fit to recognize. The judicial seizure of the property of a friendly state may be regarded as such an affront to its dignity and may so affect our relations with it, that it is an accepted rule of substantive law governing the exercise of the jurisdiction of the courts that they accept and follow the executive determination that the vessel shall be treated as immune. Ex parte Peru, supra, 588. But recognition by the courts of an immunity upon principles which the political department of government has not sanctioned may be equally embarrassing to it in securing the protection of our national interests and their recognition by other nations.

When such a seizure occurs the friendly foreign government may adopt the procedure of asking the State Department to allow it. But the foreign government may also present its claim of immunity by appearance in the suit and by way of defense to the libel. In such a case the court will inquire whether the ground of immunity is one which it is the established policy of the department to recognize. Ex parte Muir, supra, 533; Compania Espanola v. The Navemar, supra, 74. Such a policy, long and consistently recognized and often certified by the State Department and for that reason acted upon by the courts even when not so certified, is that of allowing the immunity from suit of a vessel in the possession and service of a foreign government.

It has been held below, as in *The Navemar*, to be decisive of the case that the vessel when seized by judicial process was not in the possession and service of the foreign government. Here both courts have found that the Republic of Mexico is the owner of the seized vessel. The State Department has certified that it recognizes such ownership, but it has refrained from certifying that it allows the immunity or recognizes ownership of the vessel without possession by the Mexican government as a ground for immunity. It does not appear that the Department has ever allowed a claim of immunity on that ground, and we are cited to no case in which a federal court has done so. In *The Davis*, 10 Wall. 15, this Court held that a salvage lien was enforcible against property belonging to but not in actual possession of the United States, and in this it followed a decision of Judge Story in *United States* v. *Wilder*, Fed. Cas. 16694. And in *The Fidelity*, Fed. Cas. No. 4758, (8 Fed. Cas. at 1191), Chief Justice Waite said of the ruling of *The*

¹ This salutary principle was not followed in Berizzi Bros. Co. v. S. S. Pesaro, 271 U. S. 562, where the court allowed the immunity, for the first time, to a merchant vessel owned by a foreign government and in its possession and service, although the State Department had declined to recognize the immunity. The propriety of thus extending the immunity where the political branch of the government had refused to act was not considered.

Since the vessel here, although owned by the Mexican Government, was not in its possession and service, we have no occasion to consider the questions presented in the Berizzi case. It is enough that we find no persuasive ground for allowing the immunity in this case, an important reason being that the State Department has declined to recognize it.

Davis: "Property does not necessarily become a part of the sovereignty because it is owned by the sovereign. To make it so it must be devoted to the public use and must be employed in carrying on the operations of the government."

In the case of *The Navemar*, supra, the Spanish Ambassador asserted on behalf of the Spanish Republic that the seized vessel was the property of the Republic, acquired by expropriation from a Spanish National, but the claim of immunity which had not been recognized by our government was rejected by the Court on the ground that the Spanish government was not in possession of the vessel at the time of her arrest.²

The lower federal courts have consistently refused to allow claims of immunity based on title of the claimant foreign government without possession, both before The Navemar, supra, Long v. The Tampico, 16 Fed. 491, 493, 494 (opinion by Judge Addison Brown); The Johnson Lighterage Co. No. 24, 231 Fed. 365; The Attualita, 238 Fed. 909; The Carlo Poma, 259 Fed. 369, 370, reversed on other grounds 255 U. S. 219; The Beaverton, 273 Fed. 539, 540; and since, Ervin v. Quintanilla, supra, 941; The Uxmal, 40 F. Supp. 258, 260; The Katingo Hadjipatera, 40 F. Supp. 546, 119 F. 2d 1022; The Ljubica Matkovic, 49 F. Supp. 936.

Whether this distinction between possession and title may be thought to depend upon the aggravation of the indignity where the interference with the vessel ousts the possession of a foreign state, Sullivan v. State of Sao Paulo, 122 F. 2d 355, 360, it is plain that the distinction is supported by the overwhelming weight of authority. More important, and we think controlling in the present circumstances, is the fact that, despite numerous opportunities like the present to recognize immunity from suit of a vessel owned and not possessed by a foreign government, this government has failed to do so. We can only conclude that it is the national policy not to extend the immunity in the manner now suggested, and that it is the duty of the courts, in a matter so intimately associated with our foreign policy and which may profoundly affect it, not to enlarge an immunity to an extent which the government, although often asked, has not seen fit to recognize. We have considered but

The Cristina, 1938, A. C. 485, in which the immunity was recognized, seems to have proceeded on the ground that the possession taken in behalf of the friendly foreign government was actual. Similarly in The Arantzazu Mendi, 1939, A. C. 256, 263, the sovereign was "in fact in possession of the ship." In The Jupiter, 1924, P. 236, 241, 244 (cf. The Jupiter No. 2, 1925, p. 69; The Jupiter No. 3, 1927, p. 122, 125), it appeared that before the suit was brought the master had repudiated the possession and ownership of the plaintiffs and held the vessel for the claimant government. And in The Porto Alexandre, 1920, p. 30, 34, the vessel had been requisitioned under the order of the foreign government and on the particular voyage was carrying freight for that government. In The Annette; The Dora, 1919, p. 105, 111, an alternative ground of decision was that the sovereign had parted with possession. The Court said: "If it is not in possession, the Court interferes with no sovereign right of the government by arresting the vessel, nor does it, by arresting the vessel, compel the government to submit to the jurisdiction or to abandon its possession."

do not find it necessary to discuss other contentions of petitioner, as they are without merit.

Affirmed.

Mr. Justice Frankfurter, concurring.

In Berizzi Bros. Co. v. S. S. Pesaro, 271 U. S. 562, this Court held for the first time that "merchant ships owned and operated by a foreign government have the same immunity that warships have." It did so not because the Department of State by appropriate suggestion or through its established policy had indicated that due regard for our international relations counseled such an abnegation of jurisdiction over government-owned merchantmen. On the contrary. In answer to an inquiry by Judge Mack before whom the Pesaro's claim to immunity was first raised, the Department of State took this position: "It is the view of the Department that government owned" merchant vessels or vessels under requisition of governments whose flag they fly employed in commerce should not be regarded as entitled to the immunities accorded public vessels of war. The Department has not claimed immunity for American vessels of this character." The Pesaro, 277 Fed. 473, 479-480, note 3; and see 2 Hackworth, Digest of International Law, pp. 429-430, 438-439. Thus, in Berizzi Bros. Co. v. S. S. Pesaro, supra, this Court felt free to reject the State Department's views on international policy and to formulate its own judgment on what wise international relations demanded. The Court now seems to indicate however that when, upon the seizure of a vessel of a foreign government, sovereign immunity is claimed, the issue is whether the vessel "was of a character and operated under conditions entitling it to the immunity in conformity with the principles accepted by the department of the government charged with the conduct of our foreign relations."

If this be an implied recession from the decision in Berizzi Bros Co. v. Pesaro, I heartily welcome it. Adjudication should not borrow trouble by worrying about a case not calling for decision. It is for me not borrowing trouble to raise the relation of the Pesaro decision to the situation now before the Court. I appreciate that the disposition of the present case turns on the want of possession by the Republic of Mexico. My difficulty is that "possession" is too tenuous a distinction on the basis of which to differentiate between foreign government-owned vessels engaged merely in trade that are immune from suit and those that are not. Possession, actual or constructive, is a legal concept full of pitfalls. Even where only private interests are involved the determination of possession as bankruptcy cases, for instance, abundantly prove, engenders much confusion and conflict. Ascertainment of what constitutes possession or where it is, is too subtle and precarious a task for transfer to a field in which international interests and susceptibilities are involved.

If the Republic of Mexico now saw fit to put one junior naval officer on

merchantmen which it owns but are operated by a private agency under arrangements giving that Government a financial interest in the venture, it would, I should suppose, be embarrassing to find that Mexico herself did not intend to be in possession of such ships. And, certainly, the terms of the financial arrangement by which the commercial enterprise before the Court is carried on can readily be varied without much change in substance to manifest a relation to the ship by Mexico which could not easily be deemed to disclose a want of possession by Mexico.

The fact of the matter is that the result in Berizzi Bros. Co. v. S. S. Pesaro, supra, was reached without submission by the Department of State of its relevant policies in the conduct of our foreign relations and largely on the basis of considerations which have steadily lost whatever validity they may then have had. Compare the overruling of The Thomas Jefferson, 10 Wheat. 428 (1825), by The Genesee Chief, 12 How. 443 (1851). The views of our State Department against immunity for commercial ships owned by foreign governments have been strongly supported by international conferences, some held after the decision in the Pesaro case. See Lord Maugham in Compania Naviera Vascongado v. S. S. Cristina [1938] A. C. 485, 521-523. But the real change has been the enormous growth, particularly in recent years, of "ordinary merchandizing" activity by governments. See The Western Maid, 257 U. S. 419, 432. Lord Maugham in the Cristina thus put the matter:

Half a century ago foreign Governments very seldom embarked in trade with ordinary ships, though they not infrequently owned vessels destined for public uses, and in particular hospital vessels, supply ships and surveying or exploring vessels. There were doubtless very strong reasons for extending the privilege long possessed by ships of war to public ships of the nature mentioned; but there has been a very large development of State-owned commercial ships since the Great War, and the question whether the immunity should continue to be given to ordinary trading ships has become acute. Is it consistent with sovereign dignity to acquire a tramp steamer and to compete with ordinary shippers and ship-owners in the markets of the world? Doing so, is it consistent to set up the immunity of a sovereign if, owing to the want of skill of captain and crew, serious damage is caused to the ship of another country? Is it also consistent to refuse to permit proceedings to enforce a right of salvage in respect of services rendered, perhaps at great risk, by the vessel of another country? [1938] A. C. 485, 521-522.

And so, sensible as I am of the weight to which the decision in the *Pesaro* is entitled, its implications in the light of the important developments in the international scene that twenty years have brought call for its reconsideration. The Department of State, in acting upon views such as those expressed by Lord Maugham, should no longer be embarrassed by having the decision in the *Pesaro* remain unquestioned, and the lower courts should be relieved from the duty of drawing distinctions that are too nice to draw.

It is my view, in short, that courts should not disclaim jurisdiction which

otherwise belongs to them in relation to vessels owned by foreign governments however operated except when "the department of the government charged with the conduct of our foreign relations", or of course Congress, explicitly asserts that the proper conduct of these relations calls for judicial abstention. Thereby responsibility for the conduct of our foreign relations will be placed where power lies. And unless constrained by the established policy of our State Department, courts will best discharge their responsibility by enforcement of the regular judicial processes.

Mr. Justice Black joins in this opinion.

REX v. BROSIG *

ONTARIO COURT OF APPEAL

[March 1, 1945.]

A prisoner of war is criminally responsible for the looting of a mail bag and the taking of articles therefrom for his own personal use in the course of an escape and may be convicted of theft in respect thereof.

APPEAL by the Crown from the acquittal of accused by a Police Magistrate on a charge of theft from the mails. Reversed.

- J. J. Robinette, K.C., and W. M. Flannery, for appellant, the Crown.
- G. A. Martin, for respondent, accused.

ROBERTSON C.J.O.:—I have had the privilege of reading the reasons for judgment prepared by Mr. Justice Gillanders, and I concur in the conclusion reached by him.

Any exemption that this prisoner of war may have from the criminal law of Canada can, I think, only be such as may be found in the Convention relating to the treatment of prisoners of war, concluded at Geneva, and dated July 27, 1929. While no doubt a body of international law that has made great changes in the position of a prisoner of war, has developed since the time when prisoners of war were put to death, and, as more humane notions prevailed, that practice gave way to that of making slaves of them, and, still later, of putting them to ransom, it is in comparatively recent times that arrangements came to be made between warring nations, for the exchange of prisoners between the States themselves. There does not, however, appear to be any rule of international law, apart from whatever the Conventions between States may provide, whereby prisoners of war are entitled to exemption from the municipal laws of the country where they are held prisoner.

The Convention of 1929, in its articles dealing with prisoners of war, is not silent in respect to judicial proceedings against them, as distinguished from disciplinary punishment administered by the military authorities. It is

^{* [1945] 2} D.L.R. 232; courtesy of the Canadian Wartime Information Board.

plain from its express provisions that judicial proceedings are contemplated, such as may be taken against members of the armed forces of the detaining power who offend. Article 46 provides as follows:

"Prisoners of war shall not be subjected by the military authorities or the tribunals of the detaining Power to penalties other than those which are prescribed for similar acts by members of the national forces."

Article 47 contains the following clause:

"In all cases the period during which a prisoner is under arrest (awaiting punishment or trial) shall be deducted from the sentence, whether disciplinary or judicial, provided such deduction is permitted in case of members of the national forces."

Article 53 provides:

"Prisoners qualified for repatriation against whom any prosecution for a criminal offence has been brought may be excluded from repatriation until the termination of the proceedings and until fulfilment of their sentence, if any; prisoners already serving a sentence of imprisonment may be retained until the expiry of the sentence."

Article 63 provides:

"A sentence shall only be pronounced on a prisoner of war by the same tribunals and in accordance with the same procedure as in the case of persons belonging to the armed forces of the detaining Power."

Article 64 provides:

"Every prisoner of war shall have the right of appeal against any sentence against him in the same manner as persons belonging to the armed forces of the detaining Power."

Article 75, which deals with the liberation and repatriation of prisoners of war at the end of hostilities, includes this clause:

"Prisoners of war who are subject to criminal proceedings for a crime or offence at common law may, however, be detained until the end of the proceedings, and, if need be, until the expiration of the sentence. The same applies to prisoners convicted for a crime or offence at common law."

No doubt, cases will arise where it becomes a question whether the conduct of a prisoner of war is more properly to be regarded as a matter for military discipline, rather than for judicial proceedings as a breach of the criminal law. The question put by Lord Campbell in Reg. v. Sattler (1858), Dears. & Bell 525 at p. 543, 169 E.R. 1105, quoted by my brother Gillanders in his judgment in this case, may serve as an illustration. No such question arises in this case. The "looting" of the mail bag was not an act necessary for the escape of the prisoner of war. In my opinion it stands upon no different or higher footing than a similar act committed by a member of the armed forces of Canada. The act served no military purpose. It was an offence against the civil power for the personal advantage of the respondent.

In view of the considerations that I have stated, it is, in my opinion, the duty of the Court to deal with the charge against the respondent in the same

way as we would deal with a similar charge against a member of the armed forces of Canada. The charge of stealing a parcel sent by parcel post was proved. His status as a prisoner of war does not exempt him from conviction, and it only remains to fix the penalty. No doubt, there were mitigating circumstances, and it so happens that since this charge was laid, the section of the *Criminal Code* that applies, has been amended so that we are able to prescribe for this offence a less severe sentence than a term of three years' imprisonment, which was formerly the minimum sentence allowed. I agree with my brother Gillanders that a term of two months' imprisonment is proper in the circumstances of this case.

Supplementing the references to authorities by my brother Gillanders, I refer to Wheaton's International Law, 7th ed., vol. 2., pp. 177 ff.; an article on Prisoners of War in 190 L.T. Jo., p. 150, and an article in 35 American Journal of International Law (pp. 522-3), dealing with escaped prisoners of war in a neutral jurisdiction.

HENDERSON J.A.:—I have had the privilege of reading the opinions of my Lord the Chief Justice and of my brother Gillanders, with which I agree.

GILLANDERS J.A.:—The respondent is a German prisoner of war, a paratrooper of the German Air Force, taken prisoner in Holland in 1942, transported first to England and later moved to Canada, where he has since been On December 21, 1943, he secreted himself in a prisoner of war mail bag at the prisoner of war camp where he was detained. The mail bag was in due course placed with others in the mail car on a Canadian National train. its weight exciting comment but apparently not the suspicion of the railway mail clerks who moved it from place to place. The mail bag was finally placed close to a radiator in the mail car. Finally the accused, oppressed by heat and lack of fresh air, released himself from the bag by cutting it open with a knife which he had in his possession. After getting out of the bag in which he had concealed himself, he cut open another mail bag in the car and removed some parcels from it. He broke these parcels open and discovered a quantity of cigarettes, some gum, and a bottle of perfume. He smoked some of the cigarettes and used some of the gum and perfume. He was later apprehended and subsequently charged with theft from the mails. charge was dismissed by the Magistrate before whom he came, and the Crown now appeals to this Court.

Counsel for the Crown necessarily accepts and relies upon the facts found, but submits that the accused as a prisoner of war was, under the circumstances, subject to the complete restraint of the criminal law and that he should have been convicted of the offence charged.

Counsel for the respondent submits that what the accused did were in fact acts which were part of or incidental to his escape and that such acts by a prisoner of war, that is those forming part of or incidental to his escape from the detaining Power, should be deemed to be acts of war rather than criminal offences.

There is little definite authority in the decided cases.

Counsel for the respondent draws attention to a question put by Lord Campbell, Chief Justice, in Reg. v. Sattler, Dears. & Bell 525 at p. 543:

"A prisoner at war committing murder would be triable; but the question is, what constitutes murder? If a prisoner at war who had not given his parole killed a sentinel in endeavouring to effect his escape, would that be murder?"

In discussing exceptions to the general rule that the criminal law applies to all persons who are within certain local limits, Mr. Justice Stephen in his work "The History of the Criminal Law of England," vol. 2, p. 8, after examining the few authorities then existing which referred to alien enemies and prisoners of war, expresses the view:

"It is difficult to extract any definite proposition from these authorities as to the cases in which foreigners are liable to English criminal law, when they are brought, against their will, into places where that law is, as a general rule, administered. None of them, however, is inconsistent with, and each of them more or less distinctly illustrates, the proposition that protection and allegiance are co-extensive, and that obedience to the law is not exacted in cases in which it is avowedly administered, not for the common benefit of the members of a community of which the alleged offender is for the time being a member, but for the benefit of a community of which he is an avowed and open enemy."

It is material to consider the provisions of the convention relative to the treatment of prisoners of war concluded at Geneva on July 27, 1929. His Majesty the King and the President of the German Reich were parties to this convention and it was signed by plenipotentiaries for Canada.

Section 5, c. 3, deals with penal sanctions with regard to prisoners of war. Without attempting to set out at length all the provisions of this chapter, the following may be observed:

Article 45 provides:

"Prisoners of war shall be subject to the laws, regulations, and orders in force in the armed forces of the detaining Power.

"Any act of insubordination shall render them liable to the measures prescribed by such laws, regulations, and orders, except as otherwise provided in this Chapter."

Article 46 provides:

"Prisoners of war shall not be subjected by the military authorities or the tribunals of the detaining Power to penalties other than those which are prescribed for similar acts by members of the national forces."

And further: "prisoners of war, undergoing disciplinary punishment shall not be subjected to treatment less favourable than that prescribed as regards the same punishment, for similar ranks in the armed forces of the detaining Power."

Article 47 provides, inter alia:

"The judicial proceedings against a prisoner of war shall be conducted as quickly as circumstances will allow." This article later refers to the sentence "whether disciplinary or judicial, provided such deduction is permitted in case of members of the national forces."

Article 48 provides in part:

"After undergoing the judicial or disciplinary punishment which has been inflicted on them, prisoners of war shall not be treated differently from other prisoners."

Article 50 provides in part:

"Escaped prisoners of war who are re-captured before they have been able to rejoin their own armed forces or to leave the territory occupied by the armed forces which captured them shall be liable only to disciplinary punishment."

Article 51 provides in part:

"Attempted escape, even if it is not a first offence, shall not be considered as an aggravation of the offence in the event of the prisoner of war being brought before the courts for crimes or offences against persons or property committed in the course of such attempt."

Article 52 provides:

"Belligerents shall ensure that the competent authorities exercise the greatest leniency in considering the question whether an offence committed by a prisoner of war should be punished by disciplinary or by judicial measures.

"This provision shall be observed in particular in appraising facts in connexion with escape or attempted escape.

"A prisoner shall not be punished more than once for the same act or on the same charge."

Part 2 makes provisions respecting disciplinary punishments, and Part 3 is headed "Judicial Proceedings." This provides rules and requirements relating to judicial hearings of charges against prisoners of war, for notice being given of the name and rank of the prisoner; the place of detention, and statement of the charges to the protecting power; that no prisoner should be sentenced without an opportunity to defend himself; that no prisoner should be compelled to admit his guilt, and he has a right to a qualified advocate of his own choice, and if necessary, to a competent interpreter, and various other provisions aimed at safeguarding the rights of a prisoner of war in judicial proceedings.

It is quite apparent that the convention anticipates judicial proceedings against prisoners of war, as well as disciplinary proceedings by military authorities.

In view of the provisions of Art. 45, it is of interest to keep in mind to what extent our own armed forces which in this case are those of the detaining Power, are subject to proceedings in the Courts. The question may be answered in the words of Sir Lyman P. Duff, Chief Justice of Canada, in

Reference re Exemption of U. S. Forces from Canadian Criminal Law, [1943], 4 D.L.R. 11 at p. 14, S.C.R. 483 at p. 490, 80 Can. C.C. 161 at p. 165: "My view can be stated very briefly. It is, I have no doubt, a fundamental constitutional principle, which is the law in all the Provinces of Canada, that the soldiers of the army of all ranks are not, by reason of their military character, exempt from the criminal jurisdiction of the civil (that is to say, non-military) courts of this country."

In amplification of this view, the Chief Justice continues, later (pp. 15-6 D.L.R., pp. 490-1 S.C.R., pp. 165-7 Can. C.C.):

"That is a well settled principle which has always been jealously guarded and maintained by the British people as one of the essential foundations of their constitutional liberties. I quote two passages on the subject—the first is from Dicey's 'Law of the Constitution', and the second is from Dr. Goodhart, the distinguished lawyer who is the successor of Maine and Pollock in the chair of jurisprudence at Oxford University and is the editor of the Law Quarterly Review; this passage is taken from an article written by Dr. Goodhart for the American Bar Association Journal for the information of American lawyers. At pp. 300–1 of Dicey it is stated:

"'A soldier's position as a citizen.—The fixed doctrine of English law is that a soldier, though a member of a standing army, is in England subject to all the duties and liabilities of an ordinary citizen. "Nothing in this Act contained" (so runs the first Mutiny Act) "shall extend or be construed to exempt any officer or soldier whatsoever from the ordinary process of law." These words contain the clue to all our legislation with regard to the standing army whilst employed in the United Kingdom. A soldier by his contract of enlistment undertakes many obligations in addition to the duties incumbent upon a civilian. But he does not escape from any of the duties of an ordinary British subject.

"'A soldier is subject to the same criminal liability as a civilian. He may when in the British dominions be put on trial before any competent "civil" (i.e. non-military) court for any offence for which he would be triable if he were not subject to military law, and there are certain offences, such as murder, for which he must in general be tried by a civil tribunal. Thus, if a soldier murders a companion or robs a traveller whilst quartered in England or in Van Dieman's Land, his military character will not save him from standing in the dock on the charge of murder or theft.'

"Referring to the legislation introduced in 1942 and passed by the Parliament of the United Kingdom, Dr. Goodhart says (American Bar Association Journal, vol. 28, p. 763):

"The important constitutional principle which was involved is one of the essential ones on which the English constitution is based. It is described by Dicey as "the fixed doctrine of English law that a soldier, though a member of a standing army, is in England subject to all the duties and liabilities

of an ordinary citizen." It is part—and perhaps the most important part—of the "rule of law" which is the distinctive feature of the British system. "It becomes, too, more and more apparent that the means by which the courts have maintained the law of the constitution have been the strict insistence upon the two principles, first of 'equality before the law,' which negatives exemption from the liabilities of ordinary citizens or from the jurisdiction of the ordinary courts, and, secondly, of 'personal responsibility of wrongdoers,' which excludes the notion that any breach of law on the part of a subordinate can be justified by the orders of his superiors." This means that the British soldier is subject to the jurisdiction of the ordinary courts, and is responsible to them for any breaches of the law which he may commit. So long as this principle is maintained, it will be impossible for anyone to establish a military dictatorship in Great Britain."

There is nothing in the provisions of the Convention to exclude the application of the Criminal Code here.

Counsel for the appellant urges that prisoners of war are subject to the complete restraint of the criminal law whether or not the acts in question are a part of or incidental to escape from the detaining Power. It is unnecessary and undesirable to express here an opinion as to what view should be taken under other circumstances, for instance, if a prisoner of war were accused of assaulting a military guard who endeavoured to prevent his escape.

In this case the Magistrate has found as a fact: "With regard to the perfume, I have given him the benefit of the doubt and say that he used it in order to assist his escape by concealing the extreme odour of perspiration. With regard to the cigarettes and gum I am unable to see that they would assist his escape materially and I feel that he took them for his own comfort."

I see no reason to disagree with the finding of fact that the taking of the cigarettes and gum from the mail bags was for personal comfort of the accused and not a part of or incidental to his escape. Under the circumstances he is liable to the restraint of the criminal law and to proceedings in the Courts in the same way as a member of the armed forces of this country.

The appeal must be allowed and a conviction recorded.

As to sentence—the provisions of the Code with respect to such a charge have been recently amended so that now the minimum sentence is in the discretion of the Court. Counsel for the Crown suggests only a moderate sentence. Under the circumstances a sentence of two months should be imposed.

Appeal allowed; accused convicted.

PART CARGO EX M. V. GLENROY *

PRIVY COUNCIL

[March 7, 1945.]

Shipping—Prize—Cargo—Pre-war contract—Neutral shipper—Letter of Credit—Refusal of bank to accept draft—Cancellation of contract—Enemy house of trade—No passing of property—Goods the concern of enemy house of trade—Locus poentientiae—Condemnation

A Japanese company, carrying on business in Japan, had branches in London and Hamburg. The business in Germany was later incorporated there, but the whole of the shares in the German company were owned by the Japanese company and their trustees, and, in addition, the German company was controlled and staffed by, and was entirely dependent on, the Japanese company, being really a purchasing and selling house of that company. A contract, in 1939, for the sale of goods by the Japanese company to the German company stipulated, inter alia, Hamburg as the destination, the price per ton c.i.f. Hamburg, and that payment was to be by a three months sight draft against a letter of credit on a bank to be named. A letter of credit was duly issued by the Hamburg branch of the bank (a Japanese company) to the Japanese company authorizing them to draw on the London branch of the bank at three months for account of the German The letter of credit contained instruccompany for the price of the goods. tions that the bills of lading, drawn in triplicate, were to be made out to the order of the bank, and the invoices and insurance policy, in triplicate, in the bank's name or in the name of the shipper and blank endorsed. Two sets of documents were to be sent to the bank at Hamburg and one set, with drafts on London attached, to be delivered to the bank in London against acceptance of the drafts.

The goods were shipped in Japan on the M. V. Glenroy, a British vessel, and bills of lading issued, invoices prepared and insurance taken out on July 31, 1939, in accordance with those instructions. The invoices stated that the goods were "shipped by order and for account of" the German company. On August 7, 1939, the Japanese company drew a bill in accordance with the credit, negotiated it through a Japanese branch of the bank, which delivered the three sets of documents as instructed. The set sent, with the draft attached, to London, was received there on September 13, 1939, and owing to the outbreak of war was not accepted or paid. On September 13, 1939, the German company cancelled the contract unconditionally. Meanwhile, at some date unknown, the Glenroy had been diverted to Liverpool, where she arrived on October 17, 1939, and there, on November 2, 1939, the goods were seized as prize, on a claim by the Crown that they were enemy property or contraband of war liable to condemnation.

Held, that there was nothing in the facts and circumstances which dif-

^{* 61} Times Law Reports 303.

ferentiated the contract from the ordinary c.i.f. contract, and accordingly, the documents not having been taken up and paid for, the property in the goods had not passed to the German company so as to become enemy property. The German company, however, though in one sense a separate entity, being separately incorporated, was in substance a branch of the Japanese business, where the control lay, and constituted a house of business of that company. The goods at the outbreak of war were the concern of the Hamburg branch rather than of the company in Japan, and were enemy property within the principle in *The Anglo-Mexican* (34 *The Times* L. R. 149; [1918] A. C. 422), and the Japanese company having taken no steps, by discontinuing, or dissociating itself from, the enemy branch, the taint of enemy ownership was not removed, and the goods were liable to condemnation.

The Anglo-Mexican (supra), Daimler Company, Limited v. Continental Tyre and Rubber Company (Great Britain), Limited (32 The Times L. R. 624; [1916] 2 A. C. 307) and The Lutzow (34 The Times L. R. 147; [1918] A. C. 435) referred to.

Decree of the President (60 The Times L. R. 171; [1944] p. 11) set aside.

This was an appeal from a decree of Lord Merriman, P., given in the Prize Court on December 21, 1943, whereby he dismissed the claim of the Crown that a consignment of 2,240 bags of Nagauzura beans, part cargo ex M. V. Glenroy, was enemy property or contraband of war and as such or otherwise liable to condemnation.

The facts appear from the judgment of the Judicial Committee.

The Attorney-General (Sir Donald Somervell, K.C.), Mr. J. V. Nesbitt and Mr. Patrick Devlin appeared for the appellant, his Majesty's Procurator-General; Sir Robert Aske, K.C., and Mr. Robert Gething for the respondent, the controller of the London branch of the Japanese company.

Lord Porter, delivering the judgment of the Board, said: This is an appeal by his Majesty's Procurator-General against a decree, dated December 21, 1943, of the President of the Admiralty Division sitting in Prize, dismissing the claim of the Crown that a part cargo of 2,240 bags of Nagauzura beans ex M. V. Glenroy was enemy property or contraband of war and liable to condemnation.

The beans were shipped from Otaru, in Japan, for carriage to Hamburg in the following circumstances:—There is in Japan a corporation known as Mitsui Bussan Kabushiki Kaisha (hereinafter called Mitsui) which carries on business in that country and has a branch in London (registered under the Companies Acts as a branch) called Mitsui and Co., Limited (hereinafter referred to as Mitsui, London). Mitsui has since 1910 also carried on a business in Germany, originally at Hamburg through a branch office, and in 1926 this business was incorporated in that country. To this company were transferred the assets, business and staff employed in Germany, and in 1928

the head office was transferred to Berlin, but Hamburg continued as a branch office of the German company. The whole of the shares in this company are owned by Mitsui and their trustees. In addition, it is controlled and staffed by Mitsui and is entirely dependent on that company. It is really a purchasing and selling house of Mitsui, just as are Mitsui's branches elsewhere, and according to a declaration made by Mitsui's manager, although it may be considered as a German company by reason of its being incorporated in Germany according to German law, yet, without the slightest doubt, it is for all practical and business purposes considered, even in Germany, as a branch office of a foreign company.

Mitsui had also a branch at Otaru, in Japan, and by a purchase note dated July 10, 1939, and by a sale note dated July 11, 1939, Mitsui, Hamburg, confirmed the purchase and Mitsui, Otaru, the sale of the beans, the subjectmatter of the present claim. Among the terms agreed on were: shipment July; destination Hamburg; price £17 0s. 0d. per ton c.i.f. Hamburg; Otaru to draw at three months sight against a letter of credit on a bank to be This bank was, by August 5, identified as the Yokohama named later. Specie Bank, and a letter of credit was duly issued by the Hamburg branch of that bank to Otaru, authorizing them to draw on the London branch at three months for account of Mitsui (Hamburg) for the price of the beans. This letter contained instructions that the bills of lading, drawn in triplicate, were to be made out to the order of the Yokohama Specie Bank, Limited, and the invoices and insurance policy, in triplicate, in the bank's name or in the name of the shipper and blank endorsed. Two sets of documents were to be sent to the bank at Hamburg, and one set, with drafts on London attached, to be delivered to the bank in London against acceptance of the drafts. drafts were to be drawn and negotiated before August 15, and to contain the clause "Drawn under letter of credit D. C. No. 7766 dated Hamburg, August 5, 1939." The letter was headed with the words "Drafts drawn under this letter of credit are negotiable through Yokohama Specie Bank, Limited, only," and ended "We hereby agree with the drawers, indorsers and bona fide holders of drafts drawn in accordance with the terms and conditions of this credit that such drafts shall be honoured on presentation at our office in London, provided they are negotiated through the Yokohama Specie Bank, Limited."

The goods were shipped and bills of lading issued, invoices prepared and insurance taken out on July 31, 1939, in accordance with these instructions. The bills of lading acknowledged shipment on board the M.V.Glenroy and were for delivery at Hamburg unto order of the bank: the invoices stated that the goods were shipped by order and for account of Mitsui (Hamburg), and the insurance policies covered them from Otaru to Hamburg, and appear to have been issued under a general cover granted to the Otaru branch and to have been blank endorsed. On August 7, 1939, Mitsui drew a bill in accordance with the credit, negotiated it through the Otaru branch of the bank and

advised the London branch of their action, ending with the words, "Drawn under L/C No. 7766 Hamburg, August 5, 1939." A letter to the same effect was sent to the bank's office in Hamburg. When negotiating the bill Mitsui delivered the three sets of documents to the Otaru branch of the bank, and on the same day two sets were sent to the bank at Hamburg and one, with the draft attached, to London, where it was received on September 13, 1939, and owing to the outbreak of war was not accepted or paid. while, on September 3, war between Great Britain and Germany had broken out, and on September 13 Mitsui (Hamburg) telegraphed to Mitsui (Otaru) that they had cancelled the contract unconditionally as they saw no way of delivery or payment, and asked the Otaru branch to dispose of the goods as they thought best. On September 14, before receipt of this message, Mitsui (Otaru) had already telegraphed to Mitsui (London) instructing them to telegraph saleable price London or Rotterdam, and on the 16th Otaru cabled "Glenroy Nagauzura sale contract cancelled unconditionally. whereabouts and alteration destination consult Y.S.B. (Yokohama Specie Bank) London who hold documents."

Meanwhile, at some date unknown, the Glenroy had been diverted to Liverpool, where she arrived on October 17, 1939, and there on November 2 the beans were seized as prize. On that same day the London branch of the bank informed Mitsui (London) that the amount of the bill had been refunded, and that they were instructed to hand over the documents free of charge, but were unable to do so as they had forwarded them to H. M. Procurator-General. At the same time they wrote to that gentleman renouncing their claim in favour of Mitsui (London). On December 29, 1941, after the entry of Japan into the war, the respondent was, under the Trading with the Enemy Act, 1939, and the Defence (Trading with the Enemy) Regulations, 1940, appointed controller of the business of the London branch of Mitsui.

On June 12, 1942, the London branch filed a claim on behalf of Mitsui on the ground that the beans were at all material times the property of Mitsui. On March 2, 1943, the respondent entered an appearance as controller, and on March 12 filed a claim on behalf of himself as controller of the London branch, and on behalf of Mitsui, on the ground that he or the London branch, or Mitsui, was owner of the goods which, he wrote, had been shipped from Japan before the outbreak of war and were not at time of shipment, or at any material time, contraband.

On April 22, 1943, the respondent was appointed by the Board of Trade to control the winding-up of the London branch, and it was agreed that he should be treated as claiming by virtue of this appointment. On this form of claim the appellant objected that the respondent could not be heard to represent Mitsui without the Royal licence, and this objection was upheld by the President. The respondent, accordingly, appears in this appeal only on behalf of himself and of the London branch. On this state of facts the

Crown maintained that the goods were subject to condemnation for three reasons, any one of which would entitle them to succeed.

In the first place it was said that the property had passed to the German company and that therefore the goods were enemy property. In the second, that Mitsui, though themselves at all material times a neutral company, maintained a business house in Germany, that the goods "appertained to" that house, and that therefore they were enemy goods. Lastly, that the goods were admittedly conditional contraband, that they were originally destined for Germany, and that though they would be free of taint if the destination were changed within a reasonable time after the outbreak of war yet in the present case the destination was not changed. The inference, it was submitted, should be drawn that though the M. V. Glenroy with the beans on board had been diverted to Liverpool, yet they might have been transhipped and sent on, that the suggestion of Rotterdam as a possible destination might well indicate such an intention, and that, at any rate, the mere fact that they were on a British ship which could not proceed to a German port was not enough to effect a change of destination. The President decided against the Crown on all three arguments.

As to the first, he held the contract to be a typical c.i.f. contract. Prima facie, this is so. It is in terms such a contract, and therefore in the normal case the property would not pass until the documents were taken up and paid for. Section 19 (2) of the Sale of Goods Act, 1893, enacts: "Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal." And section 19 (3): "Where the seller draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him."

The appellant agrees that in the ordinary case the property in the goods does not pass, but he says that this is not an ordinary case. So far as subsection (2) is concerned, he says that normally the bank to whose order the goods are deliverable is the seller's, not the buyer's, agent, but that in the present case the bank was the buyer's agent. Further, he says that in any case the intention to reserve the right of disposal is only a prima facie one and can be disproved by other circumstances. The facts on which he relied for this disproof were: (1) That the sellers had obtained a letter of credit from the bank undertaking, if certain conditions were fulfilled (which, in fact, were fulfilled), that the drafts would be honoured on presentation at its house in London; (2) that under the letter of credit two copies of the documents were to be sent to the Hamburg branch of the bank without any condition being imposed on that bank to withhold delivery in case the draft sent to London was not accepted; (3) that the draft must be negotiated through a branch of

the same bank; (4) that the relationship of the parties was such that security for payment was immaterial, the profit would go in any case to one or the other; and (5) that the invoice described the goods as shipped "by order and for account of Mitsui (Hamburg)."

For the purpose of this argument it must, of course, be assumed that the two companies are separate entities, capable of contracting with one another and so organized that the property may pass from the one to the other. It had passed, said the Crown, because the sellers had no interest in retaining it; they had negotiated a bill of exchange and received payment, and not only was acceptance and payment to be made by their subsidiary, but they had received a letter of credit from the bank undertaking that it should be honoured; they were no longer interested in the goods; they had been paid in full.

This argument, in their Lordships' view, neglects the liability of the sellers as drawers of the bill of exchange. The bank might fail, or some such event might come to pass as in fact occurred in the present case. The sellers were still interested, and not only in theory but in fact were very much interested in the final disposal of the goods. Nor do their Lordships think that the provision in the letter of credit that two of the sets of documents were to go to the bank at Hamburg is a circumstance from which an inference as to change of property can be drawn. From a letter sent on August 7, 1939, by the Otaru branch of the bank to its Hamburg branch it is plain that the bills of exchange had been drawn on the London office in pursuance of the letter of credit emanating from the Hamburg branch, and that branch from the start was aware that the drafts would be attached to the documents sent to The most obvious inference is that the two sets of documents sent to Hamburg were in duplicate for safety's sake, and they may well have been transmitted to Germany so that the goods might be released at the earliest moment at which it was known that the bill had been honoured in London without waiting for transmission of the bills of lading thence. any case, the issue of a set of three bills of lading is usual, and no inference can, in their Lordships' opinion, be drawn from the mere fact that for convenience' sake two are despatched to a destination where they may be required.

No doubt, having regard to the relationship of the parties, the Japanese company could control the action of the German house, but it may well have been thought desirable to keep their activities, profits and mutual dealings separate. Finally, it is true that the goods were bought "by order and for account of" Mitsui, Hamburg, but it is plain that Mitsui were not originally principals in this transaction. Mitsui bought the goods, transmitted them to Hamburg and charged the Hamburg house with the price. Neither in this respect nor in the other matters suggested does the transaction seem to be differentiated from an ordinary c.i.f. contract. In their Lordships' view, the property had not passed to the Hamburg company.

In the second place, the beans were said to be enemy property not as belonging to the Japanese company as neutrals but as belonging to a neutral company which maintained a branch in enemy territory and as appertaining to the business of that branch. For this argument, as for the former, it was immaterial whether the goods were contraband or not. In either case they were said to be just as much enemy property as if they had been owned directly by the German company. To establish this contention the appellant relied on the principles enunciated in The Anglo-Mexican (34 The Times L. R. 149; [1918] A. C. 422)—namely, that a neutral, wherever resident, may, if he owns or is a partner in a house of business trading in or from an enemy country, be properly deemed an enemy in respect of his property or interest in such business. To ascertain whether the goods seized in the present case were or were not liable to be condemned as prize in accordance with this principle three questions have to be answered—namely: (1) Does the principle apply where the business is carried on by means of a separate limited company incorporated in the enemy country? (2) Are the goods the subject-matter of the present claim sufficiently closely connected with the enemy business? (3) Does the law give the neutral a locus poenitentiae, so that the goods escape taint, if, before capture, he has diverted them so that they may not be delivered to the enemy house but to some other destination?

As to the first point, their Lordships are of opinion that the German company, though in one sense a separate entity from Mitsui, yet is in substance a branch of the Japanese business. The decision in Daimler Company, Limited v. Continental Tyre and Rubber Company (Great Britain), Limited (32 The Times L. R. 624; [1916] 2 A. C. 307) makes it clear that a company may be an enemy corporation though registered in this country; the question is where the control lies. In a case like the present, where the control lies in Japan, their Lordships think that similar considerations may be applied. The substance, not the form, must be observed, and inasmuch as what matters are the facts lying behind the mere formalities of the case, the German company is just as much the creature of Mitsui as if it were a branch office staffed with servants directly responsible to the Japanese company. As is apparent from the matters already stated, every circumstance except the fact of registration in Germany shows it to be an alter ego of Mitsui, doing Mitsui's business and conforming to Mitsui's wishes. If the mere separation of entities were held to prevent the German company from being a branch of the Japanese company then the difficulty experienced by a neutral in maintaining a business in a country at war with Great Britain would largely disappear. In their Lordships' view, a company so closely connected with its Japanese founder cannot escape from being held to constitute a house of business of the latter merely because it is separately incorporated.

In the second place, it was strenuously contended on behalf of the respondent that, whatever might be the relationship between the two companies, the goods in question did not belong to Mitsui (Hamburg) nor were they sufficiently closely connected with its business to make them enemy property. That goods, the property of neutrals, are condemnable only if they have such a connexion with the enemy house of trade has been recognized in England from the days of Lord Stowell, and for a period of similar length in America. In The Portland ((1800) 3 Ch. Rob. 41, at p. 42) Lord Stowell spoke of "the property of a British merchant embarked in that trade" (that is, trade in the enemy country) and later on said (at p. 44): "I know of no case, nor of any principle, that could support such a position as this, that a man, having a house of trade in the enemy's country, as well as in a neutral country, should be considered in his whole concerns as an enemy's merchant, as well in those which respected solely his neutral house, as in those which belonged to his belligerent domicil." So in The Venus ((1814) 8 Cranch, 253) the majority of those comprising the Court used the expressions (at p. 280) "so much of the property concerned in the trade of the enemy, as is connected with his residence,' and again (at p. 280), "as to property engaged in the commerce of the enemy." It is imperative, therefore, to determine whether in the present case the beans were so closely connected with the German business as to make them enemy property. Throughout the judgments and opinions in the decided cases the expressions used are nowhere very precise. As Sir Arthur Channell said in The Lutzow (34 The Times L. R. at p. 147; [1918] A. C. 435, at p. 438): "In the cases which establish the rule the property liable to be treated as enemy property is described in words which vary somewhat, and which are often rather vague."

In The Lutzow (supra) Sir Arthur Channell, in considering what connexion was necessary between the goods seized in prize and an enemy branch, quoted the words from The Portland (supra) and The Venus (supra) already set out, and quoted also the words of Lord Stowell in The Jonge Klassina ((1804) 5 Ch. Rob. 297, at p. 302): "A man may have mercantile concerns in two countries, and if he acts as a merchant of both, he must be liable to be considered as a subject of both, with regard to the transactions originating respectively in those countries." The other phrases of which he took cognizance were (i) "if a person be a partner in a house of trade in an enemy's country, he is, as to the concerns and trade of that house, to be deemed an enemy" (per Sir Samuel Evans, P., in The Manningtry (32 The Times L. R. 36, at p. 39; [1916] p. 329, at p. 340), quoting from Pratt's edition of Story, p. 60); (ii) "the property of a house of trade established in the enemy's country is considered liable to . . . condemnation as prize" (Wheaton, Dana's edition, s. 334); and (iii) from Hall's International Law following The Jonge Klassing (supra) that a trader in two countries must be regarded as a belligerent or a neutral according to the country in which the transaction has originated. In himself deciding the question, he used the expression (34 The Times L. R. at p. 148; [1918] A. C. at p. 439): "Whether the goods . . . were the concerns of the branch business . . . at Hamburg?" and decided that they were not, on the ground that the Hamburg branch

was merely a buying agent and after the purchase not concerned with the goods which were at the time of capture and, indeed, from shipment, the concern of the Japanese branch.

The expressions used in the various cases are set out at some length not because the point now under discussion has been decided in any of them, but because they establish the principle which must guide the Board. Were, then, the beans seized as prize in the present case so connected with the Hamburg house as to be regarded as its concern? It was argued on behalf of the respondent that they could not be so regarded; that the very separation of the interest between two companies resulted in the goods being the concern of that company in which the property was vested; and that so long as the Japanese company kept control of them they were its, and not the Hamburg house's, concern. The goods in question never, it was contended, came within the control of the trade of the German house; the credits, securities, or assets with which they were to be paid for did appertain to the German business, but until the property passed the beans did not; goods over which the head office kept control never became the concern of the German branch within the meaning of this doctrine.

Their Lordships do not assent to this argument. The goods were bought for and shipped to the Hamburg house—finance was arranged by them and the letter of credit, obtained by them from the branch of the Yokohama Specie Bank in Hamburg, contained a proviso that drafts must be negotiated through a branch of that bank. Acceptance, it is true, was to be made in London, but again at the office of the same bank, and the bill of exchange was to bear the inscription, "Drawn under L/C No. 7766, Hamburg, August 5, 1939." The bill of lading was endorsed "Notify to Deutsche Mitsui Bussan A.G., Hamburg," that is, the German house. The invoice stated that the goods were "shipped . . . by order and for account of" the German company, and the policy was endorsed in blank. Having regard to these arrangements and provisions their Lordships hold that these goods on the outbreak of war were the concern of the Hamburg branch rather than of the company in Japan, and therefore were enemy property within the principle referred to in The Anglo-Mexican (supra).

There remains the question whether the taint of enemy ownership was removed by the act of the Hamburg branch, accepted by the Japanese company, in cancelling the contract and changing the destination of the beans to London or Rotterdam. There is, no doubt, a mode of repentance by which the taint of enemy ownership may be removed from goods shipped by a neutral firm to an enemy branch. The neutral, by English law at any rate, can do so by discontinuing or dissociating himself from the enemy branch either before capture or, if that occurs before he has had a reasonable opportunity of doing so, by taking steps to do so within a reasonable time: see The Anglo-Mexican (34 The Times L. R. at p. 150; [1918] A. C., at p. 425). There is no suggestion that any such steps have been taken in the

present instance; on the contrary, it appears from the affidavit of Mr. Lawton, sworn on April 28, 1943, that Mitsui had continued to carry on business in Germany until shortly before that date, and there is no evidence that they ever desisted. Except by taking this course there is no suggestion in the cases of any other method of rescuing the goods from condemnation. It was suggested that in a case like the present it would be reasonable, and in accordance with the practice adopted in the case of contraband, that the neutral owner should have an opportunity of removing the enemy taint by changing the destination of the goods at any rate before seizure, and that in any case seizure and not the outbreak of war was the vital date. It was, it was said, a harsh doctrine which would condemn the goods, though they had been shipped with complete propriety and though the neutral had taken all necessary steps to withdraw them from reaching the enemy.

Their Lordships do not feel themselves able to accept this argument. sense it is a hardship, but the neutral is given a locus poenitentiae if he withdraws from the business carried on in the enemy country, and he may well be called on to elect not to continue to assist the trade of the enemy as the price of rescuing his goods from condemnation. In principle, in their Lordships' view, a withdrawal from enemy destination comes too late if made after the It is true that Sir Arthur Channell in The Lutzow (34 The outbreak of war. Times L. R., at p. 148; [1918] A. C. at p. 440) said: "It is only as enemy property at the date of the capture that they can be condemned, if at all." But this observation must be read bearing in mind that the goods were at the outbreak of war enemy goods, and having regard to the principle that a change of ownership after war has broken out is not recognized by prize law in the case of goods at sea; see The Vesta (37 The Times L. R. at p. 505; [1921] 1 A. C. 774, at p. 777) where Lord Sumner quoted the principle as set out by Sir William Scott in The Vrow Margaretha ((1799) 1 Ch. Rob. 336, at p. 338): "In a state of war, existing or imminent, it is held that the property shall be deemed to continue as it was at the time of shipment till actual delivery; this arises out of the state of war, which gives a belligerent a right to stop the goods of his enemy."

Where condemnation of the goods is claimed on the ground that they are contraband a different rule prevails, but in the argument under consideration no question of contraband arises; the claim is that the goods are enemy goods. In their Lordships' opinion, for the reasons already given, they are indeed enemy goods, and the principle applicable to enemy goods must be followed without regard to the fact that their enemy character is acquired only because the goods are the concern of an enemy branch of a neutral trader.

A further point was taken on behalf of the Crown, but not pressed as decisive of the case. It was not disputed before their Lordships that the cargo was conditional contraband, and as such liable to condemnation while on a voyage to an enemy port, but it was said that that liability ceased

when the ship's voyage was diverted and she was ordered to Liverpool. President accepted this view and held that diversion in fact was sufficient to free the goods whatever the intention or wish of their owners might be. Attorney-General contended that this ground of decision is too widely In his submission, at any rate to-day, when the doctrine of continuous voyages is freely recognized, it is not enough that the goods are diverted, unless and until they are disposed of in a non-enemy country, or so treated that they cannot reach the enemy country. In the present case he points out that the diversion was not made at the request or with any assent of the owners, nor did they show any unequivocal intention to dispose of the goods in England. The telegrams speak of shipment to London or Rotterdam, and Rotterdam, it is suggested, is a convenient port from which goods could be forwarded to Germany. As the point has not been fully argued their Lordships do not think it desirable that they should express any concluded opinion in the matter. The point is open for argument in any future Their Lordships neither affirm nor disaffirm case where the facts admit it. the grounds of this part of the decision below. As to the decision itself, however, they think that the conclusion might have been drawn that the owners in fact intended to end the voyage at a non-enemy port and withdraw the goods from any enemy destination. Such a finding would be conclusive as to any claim based on contraband.

On the ground, however, that the goods were enemy goods at the outbreak of war as being the concern of Mitsui (Hamburg), and that Mitsui took no steps to dissociate themselves from the activities of that branch, their Lordships hold that the goods were liable to condemnation. They will therefore humbly advise his Majesty that the appeal must be allowed and the decree of the Prize Court set aside, with costs, and in lieu thereof that it ought to be pronounced that the goods in question belonged at the time of seizure thereof to enemies of his Majesty and, as such, ought to be condemned as good and lawful prize and as droits and perquisites of Admiralty. The respondent will pay the costs of this appeal.

BOOK REVIEWS AND NOTES

International Law, Chiefly as Interpreted and Applied by the United States. By Charles Cheney Hyde. Boston: Little, Brown; 1945 (second revised edition). Pp. lxxxvi, 2489 (3 vols.). Index. \$45.00.

There will be none to question the courage of the author in venturing to publish this exhaustive treatise on international law under the circumstances of the present day. International law seems to lie about us in ruins comparable to those of vast areas of Europe and of the Far East. The laws of war have been violated to the point where the very word "law" seems to be a mockery. Even the laws of normal times of peace have been in many cases suspended in consequence of the existence of war. Yet in spite of such discouragement Professor Hyde, with acute intelligence, with profound judgment, and with indefatigable industry, has reaffirmed his faith in international law and has set forth its rules in the minutest detail. Others may well study his work and take heart.

As is indicated by the title, the author makes it his chief endeavor to present the views of the United States upon the vast array of principles and rules that make up the body of international law, and this second and enlarged edition brings him down to the late summer of 1941. seem at first thought unfortunate, in view of the profound effect which the war has had upon the attitude of the American people towards the problem of revivifying and strengthening international law, there are compensating For we have here the law of peace as it was interpreted and applied by the United States on the eve of the war, and we have the law of war and of neutrality as it was interpreted and applied by the United States on the eve of becoming itself a belligerent. Both the law of peace and the law of war and of neutrality are destined to undergo radical changes during the coming years. The author, being a philosopher as well as a jurist, forecasts these changes to some extent; but on the whole his study is a record of existing conditions, and it will continue as a land-mark of that unhappy middle era between two wars, when jurists were struggling to lay the bases of a world of law and order and governments were giving them but halfhearted support or were openly defiant of the ideal itself.

Perhaps the most significant characteristic of this voluminous treatise is the singular care which the author takes to measure meticulously the extent of the obligation entailed by particular practices alleged to be rules of law. He warns us in his Foreword of the "fantastic and unscientific" statements of those who ignore how states will probably act when confronted with certain conditions; how "unconvincing" it is to hear certain rules proclaimed as law which states may be expected to ignore under circumstances that may readily be foreseen. In illustration the author cites the application of the principle of the sanctity of treaties to the terms of a peace settlement, the

obligations of neutrality in the presence of the requirements of self-defense, and the laws of war in relation to present-day instruments. But these problems are incidental to the main task of distinguishing at every turn between "what the several members of the family of nations may be fairly deemed to have accepted or acquiesced in as the law governing their mutual relations, and what does not in fact appear to have received such acceptance." The primary task which the author sets before himself is "to see things as they are"; he must let "no play of imagination or vision of the future mar the accuracy of the portrayal." But while he thus remains "a realist" in his treatment of his subject, he can still look ahead to a better day in the future.

The result, however, of the author's desire to be so meticulously exact is that it leads him to use abstract generalizations which at times are so involved, as on page 278, where the author discusses the propriety of the act of intervention by the United States in transferring fifty destroyers to Great Britain in 1940, that it is only with the greatest effort that the reader can translate them into something sufficiently definite and concrete to be called The impression is given, moreover, that if other states were to a rule of law. adopt a similarly cautious and guarded attitude towards their international obligations the sum and substance of what they might all agree upon would boil down to little or nothing. But if there is ground for criticism of the author's style, there is no ground for criticism of his conclusions. facts are that much of the old so-called "customary law" is simply not law at all in the sense of general acceptance; and many principles said to be fundamental are foundations and nothing more, having no superstructure of agreed application. This is disillusioning. But if we are to build constructively in the future it is better to know just what the existing conditions are.

It is difficult to single out special topics for comment, so thorough is the author's examination of every phase of the law which has come within the scope of the foreign relations of the United States. Among the most valuable sections is one dealing with "Dependent States," which includes a study of the relations between the United States and neighboring states of the Another deals with the recognition of new governments, setting forth the traditional policy of the United States and explaining the occasional deviations from it. Being written before the creation of the Montevideo Committee of Political Defense it does not tackle the difficult case of the recent relations of the United States with Argentina. The sub-sections on "Intervention" and on the "Monroe Doctrine" are careful studies of twilight zones where law fades into politics, or rather where one general principle conflicts with another, and the state possessing the greater power has its way unless it comes to see that cooperative action is more effective than indi-The sections on the air space over the national domain, including the control over aircraft and over radio are largely new. The sections on "claims," "extradition," and the title on "nationality" follow closely the lines of the earlier edition of the treatise, but they contain much recent material and should prove particularly useful. Part V, "Agreements between States," is an exhaustive study of every aspect of treaties and agreements other than treaties, with a full account of the constitutional problems involved. Part VI, Title A, dealing with peaceful methods for the settlement of international disputes, gives a full account of the record of the United States.

Volume Three, on War, may seem to the reader a needless expenditure of scholarship and industry. Through nearly eight hundred pages the author goes into the most minute details of land and maritime war, contraband, blockade, neutrality, prize courts, and the technical aspects of the termination of war. Having warned us in his Foreword that certain laws of war. could not be expected to stand the strain that might be put upon them, the author carries his critical inquiry to each of the detailed rules which he discusses. Doubtless no two writers could be expected to agree upon all of the The reviewer, for example, finds the reasoning by which the author sustains the legality of the transfer by the United States of the fifty destroyers to Great Britain in 1940 (p. 2234 and p. 278) altogether too A simpler solution would seem to be to admit that the United States violated the obligations of a neutral and took the risk of being called to account for it by Germany, and the latter chose to overlook the violation rather than enter into a controversy that might have brought the United States into the war. There is no need to uphold the legality of the act as the author has done, and as the reviewer once did in those dark years when the American public sensed the dangers ahead but was still hoping that the false goddess "Neutrality," at whose shrine it had worshipped for so many years, would have power to save it.

But it is not necessary to agree with every detail of the author's treatment of war and of neutrality to appreciate the profound learning which he has brought to his subject and the skill with which he has argued his case. After studying what he has written the reader will be able to judge better the relation of war and neutrality to a world of law and order. There will be few to hold to the naïve belief of 1907, to take no later date, that in a life and death struggle between nations the power to control instruments of destruction will be equal to the ingenuity of man in inventing them. Professor Hyde is, of course, quite aware of the paradoxes of the laws of war, and it is doubtless to them that he refers when he expresses the hope that "the very truthfulness of his pen and the very grotesqueness of what it records may serve in some small measure to hasten the day when the law of nations presents a lovelier aspect." Some day, if the leading powers can but see their interest in doing so, they will withhold the weapons of war "from all but a single entity functioning as a war-preventing agency in behalf of all."

Happily the problem of "International Organization" is no longer summarily dismissed, as in the first edition; although it is difficult to understand why a special title could not have been assigned to it instead of including

it as a sub-sub-head (§§ 33 A-34 E) of the Classification of States of International Law. But amends are fully made by a special section (§ 923) written in September, 1944, three years after the completion of the text as a whole, in which the author seeks to show "how the conduct of the United States and its Allies in organizing for peace at the present time is bound up with the distant future, and how a vision of that future is needed for the practical solution of current problems."

Professor Hyde has already won for himself a high rank among American jurists, and this new edition of his treatise will only increase the esteem in which he is held. It is not the last word upon the subject, even for this decade. But future scholars, in interpreting the new international law of which the foundations are now being laid, will of necessity turn to these volumes and find in them an accurate statement of how things stood under the old order; and obviously innumerable details of the old order will be carried over into the new edifice.

CHARLES G. FENWICK

Of the Board of Editors

The Collected Papers of John Bassett Moore. Seven volumes. New Haven: Yale University Press; 1944. Pp. xxi; 439, 487, 479, 486, 370, 507, 432. Index. \$20.00

When I was asked by the Managing Editor of this JOURNAL to review the seven volumes of John Bassett Moore's Collected Papers, I responded with pleasure. As a reviewer, however, I can do little more than describe the volumes.

Suffice it to say that the seven volumes constitute a major contribution to the literature of international law and relations, and a monumental legacy primarily to the people of the United States from the Dean of living international lawyers. Now in his eighty-fifth year, Judge Moore combines in an exceptional degree those qualities which are necessary to an international lawyer—a high character, a profound knowledge of private and public law and of history, a comprehension of human and national psychology, the courtesy of an innate diplomat, objectivity, tact, tolerance, deference, unusual modesty and a rich fund of humor. As a raconteur he enjoys universal renown. He does not consider patriotism unbecoming a scholar. Not least among the talents which make these volumes so important is the author's love for the English language which, through his classical training. enables him to clothe his thoughts in most appropriate dress. Maintaining the quiet dignity of the acknowledged master, he nevertheless bears his honors with easy grace, and has the democratic capacity to drop into the vernacular when occasion demands. On matters on which he feels deeply, e.g., the harm done to the United States in foreign affairs by the so-called intelligentsia, he does not "pull his punches." Possibly his extremely happy domestic life had something to do with the extraordinary productivity

of his pen. In addition to the many standard works listed in the bibliography at the end of Volume VII and the long list of articles and shorter pieces which the volumes under review assemble, he found time to act as the intimate adviser of every President from Cleveland's first term to the first year of Wilson's Administration, 1913–14, and to conduct one of the most selective law practices in the whole United States. This, notwithstanding the fact that he retired from practice in 1922 at great personal sacrifice to take his place as the first American judge on the Permanent Court of International Justice. It is said that the five gradations of human perception are (1) facts; (2) knowledge; (3) understanding; (4) insight; and (5) wisdom. Our author quickly reached the final stage in this hierarchy. Never was wisdom better exemplified than in these volumes. From every page there speaks the wisest of men—statesman, philosopher and jurist. Pity the country that feels itself competent to dispense with a wisdom so profound.

The volumes under review bring together most of the author's writings, other than those in book form, in chronological order from 1877 to 1943. There are a half-dozen major contributions that have never before been published, among which mention might be made of his long professional opinion on the nullity of arbitral awards (Vol. V, p. 118), his letter of twentytwo pages to R. Walton Moore on our so-called Far Eastern Policy (Vol. VII, p. 6), and his 130-page essay on Peace, Law and Hysteria, the last study in the work (Vol. VII, p. 220). It would have been a service to publish Mr. Moore's many briefs, but space permitted the publication of only a few of these which seemed to the sponsors of the enterprise to have a special doctrinal interest. Notable among other contributions here collected are the great number of book reviews, each a literary gem, which evidence the breadth and versatility of our author's knowledge. Possibly somewhat less inspiring but of literary importance are the dozens of addresses and introductions of personalities at banquets which the author was called upon to Of more lasting value are the introductions to various books and biographies (see, e.g., the Introduction to the Life of Hamilton Fish) (Vol. VII, p. 77), and the tributes to or estimates of numerous men in public life, especially Hay, Wilson, Fish, McKinley, and Bryan. Some of the studies have for present purposes been amplified by the author, to appear as originally submitted, such as the notable Appeal to Reason, first published in Foreign Affairs in 1933. Some by an introduction or appendix have been given their proper setting. The essays in The Principles of American Diplomacy and International Law and Some Current, Illusions, both of which are believed to be now out of print, are reproduced in Volumes IV and VI. The essays, among many others, on Candor and Common Sense (Vol. VI, p. 340), The New Isolation (Vol. VI, p. 465), Fifty Years of International Law

School of Applied Philosophy, New York, Chart of the Director, Mrs. M. B. Mayer. See also Eccles. 9:17, cited in Moore, Vol. VII, p. 77.

(Vol. VII, p. 89), The Dictatorial Drift (Vol. VII, p. 136), What of the Night? (Vol. VII, p. 198), are classics and therefore of permanent significance, as is indeed most of the material in the seven volumes.

Perhaps the only element of apprehension and foreboding which these essays evidence are the author's comments upon the change in the foreign policy of the United States which was initiated by Woodrow Wilson (Vol. VI, p. 434) and was continued to its natural end by some of his successors. This begins with the Latin-American policy of March 11, 1913, inspired by repugnance to Huerta, by which only "constitutional" governments were to be recognized by the United States, this country reserving the privilege of passing on the constitutional processes observed in foreign countries. era of self-righteousness then commenced. The cooperation of the United States with other governments, Wilson said, was possible only in so far as it was supported by the observance in their own affairs of orderly processes free from the exercise of arbitrary or irregular force (Vol. VI, p. 467). evolved into the theory by which all governments had to be "democratic," followed by the view that it was America's mission to coerce the disfavored, now called "aggressors," by threat or force of arms or economic sanctions. This extraordinary policy—defying the evidence of history and American past policy—with its accompanying repudiation of a large part of international law, was designed to produce "peace," whereas it has in fact produced nothing but tyranny, poverty, suffering, extremism, and conflict. "Perpetual war for perpetual peace," with all its consequences, is the natural outcome—with a staggering and mounting public debt to boot. If instead of indulging in an emotional orgy in behalf of the League of Nations, its votaries had studied the prophetic lessons of Some Essentials of a League for Peace (Vol. V, p. 61), much anguish might have been saved.

Perhaps it may be permissable to quote at random a few of the hundreds of passages which enliven these pages.

Speaking of the abandonment of the equality of states when some states presume to coerce others, the author says (Vol. VI, p. 466):

". . . It obviously ceases to be international [law] in proportion as certain states assume to assert and exercise superiority over other states."

Speaking of Wilson's Latin-American policy, he says (Vol. VI, p. 467):

"That it was made without consultation with anyone qualified to pass upon its legal significance and practical consequences we may safely assume."

Speaking of the new school of thought that sees "peace" enforced by arms, he says (Vol. VI, p. 490):

"With similar incredulity have been treated the utterances of those . . . who, believing that international law still survived and that human nature had not suddenly changed, were unable to accept the

supposition that a desirable 'world order' could be achieved by the habitual use of the processes of war as agencies of peace."

Again, along the same lines, he says:

"... the more we are persuaded to isolate ourselves from international law, the easier it will be to guide us in the special paths which others would provide for us" (Vol. VI, p. 490).

Speaking further of the contradictions of peace by force, he says:

"Even . . . pacifists, enamored of this shibboleth ("war to end war"), espoused the shallow creed that international peace could best be assured by the use of force or threats of force" (Vol. VI, p. 402; see also Vol. VI, p. 240).

Along the same line, in reviewing a book by Crecraft, he says:

"Although it is confessed that the 'war to end war' and the 'war to make the world safe for democracy' did not pan out as predicted, we are now offered, with equal assurance and sincerity, the same remedy in the form of 'collectivism,' or combined action for the punishment of the 'aggressor.' Those who, believing with Milton that war breeds war, would allow the world a present respite from devastation, are herded together as 'isolationists' '' (Vol. VII, p. 41).

Deprecating the deceptions and illusions involved in the so-called Kellogg Pact, he says:

"The Pact [of Paris] no doubt makes a strong appeal to our *intelligentsia*, easily the most emotional and most voluble and, as I often think, so far as concerns the realities of international life, the most uninformed, the most injudicious, and the most susceptible to propaganda" (Vol. VII, p. 22).

Speaking of the trouble which American policy was inviting for the United States, he says, in a letter to the Sun, December 10, 1935:

"What we have most to fear is the 'mass psychology,' which is like the cackle among geese. The present condition of the popular mind is truly lamentable. While denouncing arms and armament makers, the professed apostles of peace are now seeking to attain their ends by getting us into every international trouble that springs up anywhere in the world. A boy once described to me a very uncomfortable horseback journey he had just made in which, as he said, his horse stumbled into all the holes he saw and into all he did not see. When it comes to assuring perpetual peace by perpetual war, the hidden holes far exceed in number those that are visible" (Vol. VII, p. 43).

That letter will repay reading.

In opposing the Administration bill of 1936 empowering the President to substitute for the well-known obligations of neutrality unilateral embargoes on particular commodities against the "aggressor" in cooperation with other countries, the author says:

"Homicidal-Suicidal Mania. In conclusion I would say that, taking the pending bill as a whole, it is characterized by a curious blend of homicidal with suicidal mania, the excitation of which rests exclusively in foreign hands. The homicidal mania glares in the proposal to try to starve other peoples who engage in war; the suicidal mania gleams in the proposal to demoralize and destroy our commerce in order that peoples at war may not be nourished by what we produce" (Vol. VII, p. 65).

Speaking of Manchuria, in his penetrating letter of December 7, 1934, to R. Walton Moore, Assistant Secretary of State, he says:

"Probably there is no other quarter of the globe that would furnish a more admirable quagmire for the sinking of blood and treasure on the part of a power bent upon enforcing peace than Manchuria. . . . Should we intervene by force in Manchuria, we should have before us three alternatives: (1) to hold and maintain order in the territory we occupied (should we be able to occupy any), (2) to turn it over to China to be governed as the rest of that country, or (3) to turn it over to some power that would guarantee order in it. In the last case Russia would gladly accept it. But it is my opinion that Russia, in the occupation of Manchuria, would be more dangerous to China than Japan is. It is also my opinion that nothing could be more detrimental to the interests of China than the destruction of Japan as a military power. Fundamentally they have interests in common; and the United States, if it had wisely and judiciously maintained its former attitude of impartial friendship towards Japan, might have made a great contribution to the working out of those interests. Many persons in the Far East understand this" (Vol. VII, pp. 24–25).

This budget of good sense, in a field in which the bulk of the American people are inadequately informed, should be taken to heart by every citizen.

EDWIN BORCHARD

Of the Board of Editors

Kratkii Kurs Mezhdunarodnogo Prava, Chast II, Pravo Voiny (Short Course in International Law, Part II, The Law of War). By E. A. Korovin. Moscow: Military-Juridical Academy, Workers and Peasants Red Army; 1944. Pp. 112. 10 rubles.

Professor Korovin's book is the most important work in a broad field of international law to appear in the Soviet Union for years. Followers of Soviet literature on the subject will recall the reconsideration of the Soviet position on international law which occurred in 1937 and resulted in the sharp criticism of Pashukanis and his school. Korovin, who had himself undergone sharp criticism by Pashukanis for theories developed in two books 2 appearing shortly after the revolution, has reëstablished himself as a leading Soviet authority. This position does not make his books or that of

¹ See John N. Hazard, "Cleansing Soviet International Law of Anti-Marxist Theories," this JOURNAL, Vol. XXXII (1938), pp. 244-252.

² Mezhdunarodnoe Pravo Perekhodnogo Vremeni, Moscow, 1924, and Sovremennoe Mezhdunarodnoe Publichnoe Pravo, Moscow, 1926.

any other Soviet Professor an official statement of the Soviet Government's view, but the effect of the statement is important, particularly when the book has been prepared as a text for use in the military academies of the Red Army, as is the case in this instance.

Lenin's familiar statement to the effect that "war is the continuation with the instruments of force of the same policy which the ruling class of the belligerent powers had been carrying on for a long time before the war" opens the book. The distinction between justified and unjustified wars, as made in the Short Course of the History of the Communist Party is also given prominence—the justified wars being those of liberation, when a nation defends itself from aggression, frees itself from the slavery of capitalism or frees colonies and dependent countries from the oppression of the imperialists; and unjustified wars being those which have as their purpose the conquering and subjugation of countries and peoples.

Readers are reminded that international law like all law, whether reflected in treaties between states or in the recognition of international custom, has a class character. Support of this law by the U.S.S.R. is explained on the ground that the inheritance of the great bourgeois revolutions and the creation of bourgeois democracy under contemporary conditions serve to strengthen the mutual understanding between the U.S.S.R. and its allies, the bourgeois democracies, in the struggle against Hitlerism.

The chapters of the book treat, in addition to general definitions and orientation among the treaties and customary law relative to the subject, the question of the commencement of war, relations between armies in the field, termination of war, the theater of land warfare, armed forces, prisoners, the wounded and sick, permissible and forbidden means of land warfare, military occupation, naval and air warfare and neutrality. The treatment under these headings is systematic and utilizes conventions and familiar historical events as source material.

In addition to referring to the conventions to which the U.S.S.R. has officially adhered, such as the Geneva Convention of 1906 on the treatment of the wounded and the sick, and its extension to naval warfare, the Geneva Protocol of 1925 outlawing chemical and bacteriological warfare and the London Protocol of 1936 on the activity of submarines with relation to merchant vessels, Professor Korovin refers to other conventions as having validity for the U.S.S.R. He states that the fact of absence of a formal declaration before the Second World War of adherence to the Hague and other conventions must not be interpreted as the refusal of the Soviet Union to observe them. He says the Soviet criticism of these conventions is not that they attempt to mitigate the horrors of war, but rather that they do it with insufficient consistency. He cites official Soviet declarations to prove that these conventions, which were adhered to by pre-revolutionary Russia,

⁸ See E. A. Korovin, review *The Soviet Union and International Law*, by T. A. Taracousio, in Harvard Law Review, Vol. XLIX (1936), p. 1392.

are considered in force. He also points out that the interest of a socialist state in humanity requires adherence to these measures.

Of primary interest to American readers is the commentary on the accepted laws of war as they are set forth. In discussing termination of war by a peace treaty Korovin sets forth the reasons why the Soviet Union never accepted the Versailles Treaty as including the following: the treaty created boundaries based not on the interest of the mass but on the interests of definite imperialist blocs; reparations fell not on German imperialist plutocracy who were largely responsible for the war, but on the broad masses of the toiling population; the promissory notes given the workers, such as the I.L.O. were pure demagogy, concealing attempts of the imperialist powers to build up a united front of capitalist countries for the annihilation of Soviet Russia and the liquidation of the achievements of the Revolution.

Reconsideration of the law relating to partisans or guerrilla bands is called for, in view of the lessons of this war. Korovin finds that the Hague Convention was a compromise between the great military powers and the other states wishing to preserve for their citizens a right of self defense, and the result is not satisfactory. He also finds the principle of personal responsibility for violation of the laws of war accepted as the basis of contemporary international law, and cites Article 227 of the Versailles Treaty and atrocity trials of this war and the last war to prove it, but he believes this principle has not yet been sufficiently realized in practice. He advises that a state like Hitler's Germany, committing not isolated excesses but organized violation of all treaty and customary international law, cannot claim protection in international conventions when punishment is at issue.

Inviolability of neutral territory will be strictly and unwaveringly supported by the U.S.S.R., Korovin states, unless special defensive measures are necessary because of threats by the enemy from neutral territory. Korovin states that in this case the Soviet Union's policy is to make a treaty with the neutral, as was done with Iran, so that Soviet interests may be protected by Soviet forces.

The American reader who knows Professor Korovin's works will find in this book a continuation of his practice of illustrating his points with a wealth of historical detail and will also find the study as thorough as a short book can be in treating each subject of importance. Although an American might wish for more extensive treatment, perhaps brevity is best for soldiers who are not likely to have the time or the inclination to study international law in detail, much less to remember more than an outline. In spite of limitations of space the author has included much to support the familiar Soviet political thesis, which has played an important part in the morale of the Red Army. The reader will find abundant reference to the advantages of the Soviet system and to the shortcomings of the non-Soviet way of life.

JOHN N. HAZARD

Freiheit der Luft als Rechtsproblem. By Dr. Jr. Alex Meyer. Zurich: Aeroverlag; 1944. Pp. 342. Appendixes. Index.

This is a study of public international law dealing with one mode of communications (in the broad sense of the word): aerial navigation. The author aims at contributing to the future development of the law of peace in that field by means of suggestions embodied in bilingual (German and French) texts and preceded by a comparative analysis of sources; his main concern is with the basic issues as he sees them: the problem of freedom of navigation (in conformity with the practice which prevailed before the Chicago Conference the word is used as including transport), sharply distinguished from freedom of the aerial space, and the balance between freedom of aerial navigation and territorial sovereignty; he also deals, but somewhat summarily, with problems of international organization.

Dr. Meyer's study went to press before the Chicago Conference; this detracts somewhat from its usefulness though much less than the layman might think.

The author states in his preface that he does not intend to deal either with "the political motives . . . which may have prompted . . . proposals for modifications in international aerial traffic" or with "economic problems."

"Depoliticization" has consistently been the desideratum of international organizations in the field of communications, from the Universal Postal Union to the Organization for Communications and Transit of the League of Nations. It is likely to remain their objective. It is doubtful, however, whether this ideal can best be served by omitting from legal contemplation the impact on aviation of security factors, as the author does when he says (p. 260): "However important the creation of an international force may be for the maintenance of peace and in the interest of security, concerning our problem, that of the regime (Regelung) of international communications by air (Luftverkehr), the creation of such a force . . . is without significance if, as is the case, internationalization of civil aviation must be rejected as a solution."

The divorce of the legal and economic factors, in a study not of the existing law but its future development, appears as equally questionable. Undoubtedly, the feeling that communications should, as much as possible, remain extra commercio, outside the do ut des of economic bargaining among States, that it is generally preferable that they should be dealt with on a multilateral, durable, institutional basis is not likely to be lost as an aftermath of the war. Right down to the present war freedom of navigation still constituted almost the alpha and omega of the public international law of navigation by sea, by waterway, and by air. This freedom, with its corollary of equality of treatment among flags, is still the leit-motiv in the final act of the Chicago Conference.

Freedom of navigation, however, is not altogether an end in itself. the point of view of the interest of the community of states its ultimate justification as a desirable legislative aim lies in the belief that it is an efficient device for insuring freedom of communications for passengers and goods, freedom, that is, not of transporting only, but also of being transported, by means of adequate facilities, at fair and equal conditions, and by the route that is technically best. If, through change in the economic factors of the problem, the efficiency of the device should become impaired then the question would arise: is freedom of navigation enough? not, in some measure, freedom of communications be directly protected? Should this come to pass at some time in the near or distant future, the question is likely to arise on the international level, as it does on the national level, whether freedom of communications can altogether be divorced from other social and economic aims—for example, the advancement of backward peoples—and if so to what extent, with what guaranties against discrimination and other policies that would impair the technical soundness of operations, and through what agencies and procedures?

There is another limitation, this one implicit, which in our opinion adversely affects the value of the book under review. The author deals with the international law of aerial navigation not as a branch of the international law of communications, or even of the law of navigation, but as a special subject. He is unavoidably led to draw comparisons between it and the law of maritime navigation (not always stated correctly) but ignores the much richer field of the law of international waterways, not to mention the international—and interstate—law of railways, to which one should primarily turn for illustrations of what may constitute a regime of freedom of communications (in contradistinction to a regime of freedom of navigation) and of the much more complex and powerful organization which the administration of such a regime would require.

Within its limitations, the study is an excellent one, based on sound scholarship, life-long familiarity with the subject, mature wisdom, and good legal sense. Such a study is particularly welcome at a time when Continental Europe is once more in a position to contribute its vital share to the development of international law. Students who have no direct access to French sources should not overlook the fact, however, that the author himself is not as thoroughly familiar with these sources as with those in his own language. This is an important caveat. One should never forget that, through the activities of the Revue de Droit International et de Législation Comparée and other journals, the yearbooks of the Institut de Droit International and, above all, the lectures given at the Hague Academy, invaluable contributions of scholars of all nations—including many essential contributions of leading United States' scholars—are exclusively available in French.

It would be gratifying if Dr. Meyer gave us in the near future the benefit of his thinking in an addendum to his book devoted to the Chicago Conference.

JAN HOSTIE

Washington

Transactions of the Grotius Society. Volume 29: "Problems of Peace and War" (Papers read before the Society in the Year 1943). London: Longmans, Green; 1944. Pp. xxiv, 170. 15/-.

In spite of the war, these transactions maintain the high standards of the Grotius Society and mark the continuance of that extraordinary collaboration between bench, bar, and university so characteristic of the study of international law in Britain. The contributions for 1943 lack any common point de départ; their general nature can best be explained by listing them: Lauterpacht, "The law of nations, the law of nature, and the rights of man"; Keen, "The future development of international law"; Lipstein, "Conflict of laws before international tribunals"; McNair, "The need for the wider teaching of international law"; Wolff, "Municipal courts of justice in enemy-occupied territory"; Gutteridge, "Comparative law and the conflict of laws"; Mann, "Judiciary and executive in foreign affairs."

All of these articles are interesting to readers of this Journal, but we have space to underline merely those points which appear unusually timely or significant.

Professor Lauterpacht, after a scholarly review of the subject, showing how the notion of the rights of man derived its strength and sustenance from the law of nature, favors an international bill of the rights of man, not as a declaration of principles, but as part of positive law, "grounded in the firm anchorage of the international legal order." Here the law of nature can still play an important role, supplying much of the spiritual basis and political inspiration for the elevation of the rights of man onto a plane superior to the will of the sovereign state.

F. N. Keen sets forth the legal basis of the coming world order. His ideas recall those formulated in *The International Law of the Future*, and while now that the San Francisco Conference is over we are less interested in "iffy" plans, it is notable that the author believes it indispensable to endow the new world organization with power to legislate by some reasonable majority. He also wants a court with compulsory jurisdiction over all legal disputes, and sanctions to enforce its judgments.

In a heavily documented study, Dr. Lipstein gives us his conclusions on six important problems of conflicts of laws, and says in particular that "an international system of conflict of laws differs in substance from municipal private international law in four essential respects. It cannot rely on a *lex fori* in matters of private law; *renvoi* is inapplicable; public policy is determined by international law; conflicts of classification are rare" (p. 76).

Professor McNair gives us valuable data on the teaching of international law and conflicts of laws in the British Isles, and makes an eloquent appeal for extending such teaching, believing that it "would make men better citizens of the world" (p. 92). Also, "we shall not attract them (foreign students) in large numbers to this country unless we give that subject a more prominent place in our legal education" (p. 93). "In view of the large part which our country is destined to play in the development of sound international relationships in the post-war world, it is of the greatest importance to increase the number of men and women who have it in their power to give intelligent guidance to public opinion in international affairs" (p. 97).

As the Allies are now undertaking the greatest task of military government in all history, Dr. Wolff's study of municipal courts in enemy-occupied territory is particularly useful. He treats of some of the most controverted and timely questions, and his views demand the most serious consideration, despite the appearance lately of other notable works on the subject. H. C. Gutteridge makes a plea for a wider study of comparative law. By bringing about a common understanding of the many difficult problems of private international law, such a study may pave the way for general agreement on the basic principles upon which all systems of conflict of laws should be founded.

American international lawyers will be intensely interested in F. A. Mann's study of the relation between judiciary and executive in foreign affairs, especially his review of the developments of the past fifty years and the growth of the present tendency of courts to apply to the executive for information in an ever-widening field. The dangers of this development are stressed, as, for instance, if an unwilling or temperizing executive is compelled to disclose its views or intentions when it may be unwise to do so. Although the Russian recognition cases decided in this country are not given full treatment, the author does make a penetrating criticism of the historic case of *United States v. Pink*, which he believes allows "overriding weight to the ideas pervading the foreign policy adopted by the Executive" (p. 159). Deference to the foreign policy of the Executive, maintains the author, should be a rule of judicial decision only in cases in which the harm to the public which otherwise would result is substantially incontestable; it should rest on tangible grounds, not on mere generalizations (p. 163).

JOHN B. WHITTON

Of the Board of Editors

Enemy Property. Volume XI, No. 1, of Law and Contemporary Problems. Durham, N. C.: Duke University School of Law; 1945. Pp. 201. Index. \$1.00.

This timely volume contains twelve well documented articles discussing the legal and administrative aspects of the treatment of enemy property by the United States Government against a background of comparative and inter-

1315 U.S. 203 (1942); this JOURNAL, Vol. 36 (1942), p. 309.

national law. The Foreword by Professor E. R. Latty is followed by a comparative survey of the control over enemy property applied by the countries of the Western hemisphere, by Martin Domke, Research Director of the American Arbitration Association. Next comes a study of the freezing control program of the United States entitled "The Control of Foreign Funds by the United States Treasury," by William Harvey Reeves of the New York bar. Frederick W. Eisner of the New York bar presents the third article on "Administrative Machinery and Steps for the Lawyer," which contains valuable information for the lawyer practicing before the Foreign Funds Control of the Treasury Department and the Alien Property Custodian.

The control, seizure, and administration of enemy property is covered by the next two articles, entitled "The Work of the Alien Property Custodian," by Paul V. Myron, and "Enemy Patents," by Howland H. Sargeant and Henrietta L. Creamer, all of the Office of the Alien Property Custodian. The latter chapter treats of the seizure of patent contracts which forms a bridge to the next article, "Cartels and Enemy Property," by Herbert A. Berman, a Special Assistant to the Attorney General. The latter shows. among other things, the "network of camouflage" erected by German nationals over certain domestic companies in reality German owned or con-Then follows a rather technical article by Judge Ernst Rabel on "Situs Problems in Enemy Property Measures," discussing some of the problems in conflict of laws in relation to the situs of property subject to the freezing and vesting orders. The next two articles, by George A. McNulty, formerly Special Assistant to the Attorney General, and Herbert Wechsler, Assistant Attorney General, respectively, deal with the "Constitutionality of Alien Property Controls." In these articles, which are rather technical, the authors do not see eye to eye on all aspects of the question.

A thoughtful discussion of both sides of the current question whether private enemy property should be confiscated in time of war will be found in the next three articles: "A Brief Against Confiscation," by Otto C. Sommerich of the New York bar, "'Inviolability' of Enemy Private Property," by Seymour J. Rubin of the Department of State, and "Post-war Prospects for Treatment of Enemy Property," by Representative Gearhart. The two latter writers find no difficulty in international law with the retention of private enemy property in the last war and the present one.

These chapters of necessity overlap somewhat, but they all deal with different problems arising out of the administration of the Trading with the Enemy Act of 1917, as subsequently amended and extended, particularly by the First War Powers Act passed eleven days after Pearl Harbor. The wartime control, use, and sale of all kinds of enemy property stem from these laws. The legal effects of these statutes, their constitutionality in the United States, and their validity under international law are discussed at length. The main difficulty has been to ascertain whether property subject to control really belonged to an "enemy," as defined by law, in view of the

efforts made by him to retain, conceal, and camouflage ultimate ownership. What final disposition shall be made of the enemy property seized or controlled by the United States has not yet been determined. How far the United States should go in retaining the proceeds of the property seized is argued pro and con, particularly in the last three of these articles. In the final chapter Representative Gearhart forcefully expounds the pending bill introduced by him on post-war disposition of enemy property in relation to similar legislation after the First World War.

L. H. WOOLSEY

Of the Board of Editors

La Reintegración maritima de Bolivia ante la Historia, el Derecho Internacional, y la Geografía. By W. González Cortés. Potosi, Bolivia: Editorial Universitaria; 1944. Pp. x, 139.

Generally speaking the Americas are not burdened with the resentments and problems of an old past—Goethe's Amerika, du hast es besser! Yet even in the Americas there are such things as Alsace-Lorraines and the problems arising out of the Pacific War furnish an example. The problem of Tacna and Arica, between Chile and Peru, was finally settled in 1929 but the problem of a direct access of Bolivia to the Pacific remains unsettled.

It is with this fundamental problem of Bolivia that this doctoral thesis deals. It stresses the geographical necessity of a Pacific port as a prerequisite for Bolivia's economic, political, and cultural development. It laments the backwardness of the country, its spirit of "claustrophobia."

The author gives a full history of the matter: Bolivia's rights since colonial times and under the principle of uti possidetis juris of 1810. He narrates Chilean preparations for the conquest, strongly castigates the incompetence of Bolivian Governments. He reviews the different negotiations and treaties with Chile, the discovery of the riches of guano and nitrates, the Bolivian alliance with Peru of 1873, the outbreak of the Pacific War of 1879, Chile's military triumph, the Chilean-Bolivian pact of armistice of 1884, followed only twenty years later by the definitive treaty of peace of 1904, which confirmed Chile's conquests.

The author's attacks against the validity of the treaty of 1904, because of duress, because of "immoral contents," depriving Bolivia of the "inherent right" of free access to the sea, are juridically weak, constitute mere "natural law," i.e. political arguments. Better is his argument or charge of Chile's violation of the treaty of 1904.

The author narrates Bolivia's action before the League of Nations Assembly in 1920–21, for the revision of the treaty of 1904 under Art. XIX of the Covenant. Here again Chile scored a diplomatic triumph.

Just as Art. XIX was greeted jubilantly in Bolivia, as well as Wilson's point on Poland's free access to the sea, just as Kellogg's suggestion of 1926 to cede Tacna and Arica to Bolivia was enthusiastically welcomed in LaPaz

and led to nothing, thus the author sets now all his hopes on the Atlantic Charter; in what seems to be an illusion, he interprets Point 4 of that document, concerning free access to the world's raw materials, as a commitment by the United Nations to give Bolivia a free access to the sea.

The author admits that Bolivia's maritime question is often only an item of propaganda in Bolivia's interior politics. He admits Bolivia's military weakness, economic backwardness, unhappy political situation, and the unbending resistance of Chile.

But he invokes justice for Bolivia, he invokes the principles of Pan-Americanism which negate the right of conquest, which state that "victory gives no rights," which deny recognition to territorial acquisitions through force. Yet Bolivia has lost her coast to victorious Chile (whose national motto is: Por la razón o por la fuerzal), and recently the Chaco to victorious Paraguay. Chilean diplomats coolly asserted that they hold what they conquered "with the right of the victor, supreme law of nations," that they "hold by the same title by which the United States holds Puerto Rico."

To this writer, who has much sympathy for unhappy Bolivia, but no less sympathy for the advanced and splendid country of Chile, it seems that Bolivia should not indulge in Utopian illusions. She should, first of all, put her own house in order. Then by good diplomacy and friendly support, it should not be impossible at the opportune moment to achieve a truly Pan-American solution for Bolivia's need of a Pacific Port, a solution acceptable to Peru, Bolivia, and Chile, a solution which will end a resentment of over half a century and reestablish genuine good-neighborly relations between the Latin American sister republics on the Pacific, Bolivia and Chile.

Josef L. Kunz

Of the Board of Editors

International Tribunals Past and Future. By Manley O. Hudson. Washington: Carnegie Endowment for International Peace and Brookings Institution; 1944. Pp. xii, 287. Appendix. Index. \$2.50.

This book, says the author, is an attempt to summarize the experiences of international tribunals and to apply what is to be learned from that experience to the immediate problems with which the world is or may be faced. It contains, besides a short Introduction on the "Evolution of International Tribunals," and some "Conclusions," two main divisions, one dealing with general problems which experience has so far brought to light, and the other with specific problems and suggestions for the future.

Judge Hudson's general attitude is one of festina lente, and I suspect that one of his main purposes will have been achieved if the reader carries away from this book, as he ought to do, two main impressions; firstly, that of the greatness of the service which courts can render to international relations, and, secondly,—and this is a point less generally appreciated, and the emphasis which Judge Hudson places on it is therefore all the more welcome

—that of the limitations on their functions which arise partly from qualities inherent in the judicial process itself, and partly too from the nature of the relations between states. He rightly insists that to magnify the role of courts in international life is certain not only to lead to disappointment, but also to impair their usefulness within their proper function.

Probably the most difficult of the unsolved problems of international adjudication is to find some easily applicable test for distinguishing the disputes for which that procedure is genuinely appropriate, and which it is therefore reasonable to hope that states will eventually be brought to agree to submit to courts as a matter of course, from those other disputes as to which it is not, and never will be, reasonable to look for such a consummation; or, in other words, what really is the distinction between so-called justiciable and non-justiciable disputes? For we are doing no service to the cause of international adjudication if, in Judge Hudson's words, we expect it "to relieve politicians of their responsibilities," if, in short, we imagine that even a perfected international judicial organization could ever much reduce, far less supersede, the functions of diplomacy in the disposal of disputes. recognize instinctively inside the state the need for a variety of methods for dealing with disputes, and the need is certainly not less peremptory in the disputes of states. Judge Hudson evidently thinks, and in this the present reviewer heartily agrees with him, that Article 15 of the League Covenant has indicated the lines on which we can hope to make progress.

Judge Hudson is very conscious of those numerous practical difficulties which are so often airily overlooked by those who have had no first-hand experience with international courts,—difficulties of finance, administration, and the like,—and he is on the whole sceptical of the wisdom of most of the extensions of judicial organisation which have been suggested from time to time, such as an international prize court, an international criminal court, or special courts for international claims, loans, or commercial disputes. Altogether this is certainly a book which no one who desires to know what international courts have done, do now, or can reasonably be expected to do in the post-war world, can afford to neglect.

JAMES L. BRIERLY

Oxford University

The United States and the World Court. By Denna Frank Fleming. Garden City: Doubleday, Doran; 1945. Pp. 206. Index. \$2.00.

This little book, describing the vain fight for the entrance of this country into the Permanent Court of International Justice, appears at a most opportune moment, for the Senate will soon have another chance to decide on this crucial matter. While the book covers rather familiar ground, never has the story of the long struggle over the Court issue been so completely nor so eloquently described. The interest of the book is heightened without injury to its scholarship by the parti pris of the author, as illustrated by this passage

in the Preface: "This book is a continuation of the author's studies of the handling of treaties for peace by the United States Senate. It is critical of the Senate's long-established ways of killing peace treaties, . . . of its glacial pace in considering them, of its deadly habit of trying to 'perfect' great multilateral treaties for our benefit alone, of its scientific technique for slowly carving the life out of peace machinery by 'reservations,' of its egotism in assuming ebedience to its sovereign will by the governments of sixty other sovereign nations" (p. 7). And the author puts the following all-important questions: "We have demonstrated our obstructive and destructive powers, but can we build an enduring civilization? And can we play our part in an ordered world within the limitations of the noose which the Senate's treaty veto constitutes?" (p. 8).

In nine well-documented chapters the author discusses the American origins of the World Court; the Senate fight against the Versailles Treaty and the latter's defeat; the creation of the Court; the successful fight against it under Coolidge in spite of overwhelming popular support; the second Root mission; the continued debate in the Senate and successful "blitz attack on the Court"; and the escapist attitude of our peacemakers, relying on the outlawry of war with its "toothless pledges." In a final chapter, "Toward the Future," the author considers four ways to end the present veto power of one-third-plus-one of the Senate. These are: 1) a swift constitutional amendment; 2) an advance pledge by the Senate to support strong and effective organization of the peace; 3) the approval of all controversial international agreements by Congressional joint resolutions; and 4) the conduct of our foreign affairs through Executive Agreements.

The first method, abandoning the treaty veto by Constitutional amendment, is strongly urged by Professor Fleming, and he believes that this would not take long if the convention method were used. But the attitude of the Senate, as shown by the Connally Resolution, is not very promising, despite the fact that it favors by a large majority (85-5) our entrance into a "general international organization." For it expressly states that such action can only be taken by means of a treaty regularly approved by the Senate by a two-thirds vote. But it is still possible, in line with certain precedents, notably our entrance into the International Labor Organization, to join the new world organization by a mere joint resolution, although there is danger that the "courts may some day look hard at the letter of the Constitution and invalidate some international action not authorized by 'treaty'" (p. There still remains one more method: the Executive Agreement. If absolutely necessary, our entrance into the new world organization could, in the author's opinion, be effected in this way. In short, if the Senate remains adamant, it can and will, he thinks, be by-passed, for "the life of this nation must go on, and the urgent business of building a world society proceed" (p. 183). JOHN B. WHITTON

Of the Board of Editors

Missions Diplomatiques et Consulaires. Tome I. By Raoul Rouzier. Port-au-Prince: Imprimerie de l'Etat; 1944(?). Pp. viii, 205.

This is an interesting and useful guide for diplomats and consuls. A curious mélange, composed of bits of diplomatic history, a little international law, and excellent practical advice culled from noted authorities or taken from M. Rouzier's own rich experience as consul-general and chef de protocole, it is particularly recommended to candidates for the foreign service in this or other countries. The author's candor is refreshing: "This book is neither a treatise on international law nor a course in diplomacy. It is a guide and nothing more. Moreover, in its preparation we have not hesitated to do exactly like other authors who have drawn generously upon the works of their predecessors."

There is much valuable information in the book, all the way from how the ambassador should place his guests at a formal dinner to a discussion of the qualities of the ideal diplomat. The treatment of matters of international law is of uneven quality; only two pages are devoted to the interpretation of treaties, and while the subject of arbitration receives sixteen pages, the Permanent Court of International Justice is completely neglected. Most of the authorities cited are French, and not the most recent at that, while highly pertinent works in English are not referred to at all. For instance, the Harvard Research volumes on diplomatic immunities and on consuls would have been most helpful, and it seems odd that the author should discuss the protection of nationals without using Borchard's leading work, The Diplomatic Protection of Citizens Abroad. It is to be hoped that Tome II will contain an index, and that citations will be fully and correctly given. But despite certain obvious defects, this book, for the reasons already stated, is as it purports to be an excellent guide, and deserves a place in the libraries of diplomats and consuls generally.

JOHN B. WHITTON

Of the Board of Editors

The Problem of Inter-American Organization. By M. Margaret Ball. Stanford: Stanford University Press; 1944. Pp. viii, 117. Appendix. Index. \$2.00.

In years past students of international organization have pointed to several weaknesses in the union of the American states, such as the professed refusal to permit action in the political field, the extreme delays incident to international legislation or the conclusion of multipartite conventions, the lack of enforcement machinery or procedure, and other similar items. They were usually told by apologists for the Pan-American system that they greatly exaggerated these defects and that even if these defects did exist they were not important. Two current developments, recent in origin but apparently very strong, tend to rectify this picture: the chronic weaknesses of the Pan-American system are being admitted—in lieu of rhapsodies over

the beauties of these weaknesses—, and steps are being taken to cure them—with the result of finding them somewhat incurable.¹

The present study presents an excellent if unoriginal analysis of the underlying elements of the Pan-American system, the standard theories concerning its organization and operation, and its needs or inadequacies. Some very sound suggestions are offered for remedying the latter although this is not the primary purpose of the study. It should be read with Miss Ruth D. Masters' recent majesterial Handbook of International Organization in the Americas at hand, however, in order to complete the factual picture on the institutional side, including semi-official and private organizations. And it should face more frankly than it does the possibly insuperable difficulties in the way of active and effective international organization and administration in this hemisphere created by conditions in the Latin-American countries themselves and by the tremendous disparity between them and the United States, the sole Great Power in the system.

NOTES

Le développement de la presse et son influence sur la responsabilité internationale de L'État. By Raymond Christinger. Lausanne: Roth; 1944. Pp. 155. In spite of the difficulties inherent in an attempt to carry on scientific research on so complex a subject in war time, the author of this volume has made a valuable contribution to the analysis of the role of the press in world affairs, and the responsibility of the State for its activities. The political influence of the press has become so great in the course of the last century that almost every state has tried to utilize it as a diplomatic weapon. It has become useful not only as a source of information and as a barometer of public opinion but also as a means of gaining friends at home and abroad and of paving the way for future action, diplomatic or military. Indeed the author thinks that the influence of the press is today so great "that it is difficult to permit, in a society of peaceful states, a press which by its attitude may compromise the efforts of the governments for the organization of peace." When a newspaper endangers peace the state cannot remain indifferent, for failure to curb such journalistic activities might imply official approval.

Thus the state is constrained to follow closely all that its newspapers are printing lest they deliberately or unintentionally create international misunderstanding. Yet where freedom of the press prevails the state can not be held responsible legally for every newspaper article or all constitutional liberties would soon vanish since no government can prevent the detrimental effects of journalistic language without exercising rigid censorship controls. On the other hand, if a state leaves its press free to compromise good relations between nations, those damaged may well hold it responsible. The author thinks it may be necessary to establish some means of compelling such states to restore the international harmony menaced by their press. He points out that juridical controls are still very imperfect: even the League of Nations failed to meet this issue squarely, and never clarified the concept of the responsibility of journalists in international matters.

¹ See article by M. Canyes, above, p. 504.

Listed below, p. 642.

The author compares three major types of press regimes: complete freedom, regulation, and state operation. He cites Great Britain, the United States, and Switzerland as countries with a free press, Fascist Italy as the best example of state regulation, and the USSR as the clearest case of a state press, where journalists are functionaries of the State. Switzerland, because of her permanent neutrality, has special problems, discussed at some length by this Swiss scholar in several interesting sections of his book. Mr. Christinger's analysis is a provocative one and merits careful consideration both from the point of view of freedom of the press and from that of the evolution of the rules of international law concerning the responsibility of the state. HELEN DWIGHT REID

American Association of University Women

A Dynamic World Order. By the Rt. Rev. Msgr. Donald A. MacLean. Milwaukee: Bruce; 1945. Pp. xii, 235, Appendix. Index. \$2.50. catholicity of this volume is its own justification. The author, a sound scholar and member of the American Society of International Law, is also a generous humorist as well as a faithful warrior in the church militant. His comprehensive grasp of world affairs reinforces his accurate knowledge and interpretation of the official pronouncements of the Catholic Church con-

cerning a dynamic world order.

The basic thesis of Dr. MacLean is that "The unshaken foundation of all humane, moral, and juridical order is belief in God. Take away this basis and all moral law collapses, and there inevitably ensues the destruction of peoples, families, and states, as well as the corroding of all social order and civilization." On the subject of the nature of peace Monsignor MacLean quotes St. Thomas Aquinas: "Peace is the work of justice indirectly in so far as justice removes the obstacles to peace, but it is the work of charity directly, since charity of its very nature ensures peace." He sustains his thesis with great learning and clarity. His specific constructive suggestions for world peace deserve the most thoughtful consideration and respect.

This book is a most stimulating and refreshing antidote to the deadening philosophy of the economic determinists and of those who seek a mechanistic

solution for the world's ills.

PHILIP MARSHALL BROWN

Of the Board of Editors

Problems of the Postwar World. A Symposium on Postwar Problems. Edited by Thomas C. T. McCormick. New York: McGraw-Hill; 1945. Pp. viii, 526. Index. \$3.75. The contributions to this symposium are made principally by members of the faculty of the Division of the Social Studies at the University of Wisconsin. The papers of Part I treat of Economic Policy. Part II is entitled "Government and Society." It is with Part III, "International Relations," that we are chiefly concerned.

Harold W. Stoke discusses the New Nationalism in the light of the drift toward collectivized states. He believes that this tendency transforms the economic, social, and cultural relations of states into matters of political significance (p. 271). Thus for example he points out that measures such as the reciprocal trade agreements negotiated ostensibly to spur international trade have been "absorbed as a part of the political arsenal of the United States" (p. 274). He discusses the part which science plays in promoting nationalism by giving rise to new fears through the possible application of new discoveries to warfare. His paper suggests some new lines of thought although frequently identifying "nationalism" with the protection of "national interest."

Our colleague Pitman B. Potter entitled his contribution "The League, a League, or What?" His long experience at close range with the old League in action has served him well in being able to set forth its merits and its defects in the light of the new political scene. He rightly reiterates that "it was not so much a failure of the League system as of the members to use it" (p. 304). He is well aware that national politics both here and abroad prevented any attempt to revive and reform the old League. He points out certain essentials necessary for effective organized international coöperation and he believes that the international community cannot afford to dispense with such organization today or in the future.

H. Donaldson Jordan of Clark University presents a postwar preview of American-British Relations and Selig Perlman of Wisconsin does the same for Russian-American Relations. The former would rely for continued good understanding upon the political identity of interests between Great Britain and the United States while the latter emphasizes the economic requirements of Russia to draw her into closer relations with us. Howard Becker and Hans H. Gerth, both of Wisconsin, have chapters on problems related to the occupation of Germany. Far Eastern questions are discussed by Frederic A. Ogg of Wisconsin and Inter-American problems by Russell H. Fitzgibbon of California. The symposium closes with H. Gordon Skilling's chapter on "Canada: Good Neighbor to the North."

We have mentioned only the papers within the direct field of international relations and not those dealing with economic and social policy. The latter may indeed be deemed correlative, according to the view of Secretary Stettinius, as expressed in his broadcast address of May 28, 1945, that "the next decade is not likely to be the enforcement of peace, but the preparation of the economic and social basis for peace." The symposium is scholarly and objective throughout.

ARTHUR K. KUHN

Of the Board of Editors

Crossroads of Two Continents. By Feliks Gross. New York: Columbia University Press; 1945. Pp. x, 162. Maps. Index. \$2.00. The author of this volume, a Pole, born as an Austrian citizen in 1906 in the old and beautiful city of Cracow, where he pursued his University studies, was later a graduate student in Paris and in 1939 visiting lecturer at the London School of Economics. He had been for twenty years active in the Polish labor movement. From occupied Poland he escaped to this country, representing the Polish underground. In 1944 he was appointed lecturer at New York University and is also the editor of "New Europe."

On the basis of an excellent knowledge of European problems and a rich personal experience, he presents in this small volume the history of proposals for a federal solution of Central and Eastern Europe and his own proposals for the future. As a source of information the book is valuable. The history of these ideas from 1848 to 1918, and of the attempts in the inter-war period of the Little Entente, the Tardieu plan of 1932, the Austro-Italian-Hungarian group under the treaty of 1934, of the Balkan Entente, of the Baltic Entente, is given. The author is not in favor of the revival of such purely political alliances which he correctly considers to have been failures. He wants a real federationist movement. He relates developments since 1939: the proposals of a post-war Czechoslovak-Polish federation of 1940 and 1942, the 1942

agreement between Greece and Yugoslavia for the constitution of a Balkan Union, and later proposals of which the Report by the Danubian Club in London of October, 1943, is by far the most detailed. In an Appendix (pp. 87–137) thirteen documents, from the Masaryk Declaration of 1918 to the above-named Report of 1943, are fully reprinted, followed by a valuable bibliography (pp. 139–153) of recent literature on plans for Central and

Eastern Europe.

The author, democrat and socialist, prefers a federation of Albania, Austria, Bulgaria, Czechoslovakia, Greece, Hungary, Yugoslavia, Rumania, Poland, and the Baltic Republics in one East-Central European Federation, or, if this is not possible, in two or three federations. His postulates are: no arbitrary combinations of alliances, but integral and democratic federalism; no pan-slavist tendency; no single country to be allowed to dominate the federation; democratic system within all the states; internal federalization (e.g. in Yugoslavia); cultural federalization (full protection of national minorities through territorial or cultural autonomy); social federalization through land distribution, social justice, and social security; finally economic federalization through a customs union and common economic planning.

The author opposes a direct Pan-European system as envisaged by Coudenhove-Kalergi, but wants a European Union composed of sub-unions: the Eastern-Central European, a Scandinavian Federation, a "Latin bloc," Belgium and Holland directly connected with Britain, whereas Germany remains completely isolated and under control. This European Federation must have strong ties with Britain, as exhausted and weak France is unfit for leadership, and with the U.S.S.R. He pleads for good relations with the Soviet Union, but is opposed to Russian domination and even to a Russian sphere of influence in Eastern and Central Europe. The whole European Union has again to be fitted into the new world-wide international

organization.

As to the author's proposal this reviewer is skeptical. The author himself concedes that the international situation is not favorable to the realization of his ideas, that the chances have deteriorated since 1943, as the Soviet Union is opposed to any federation of small states in Eastern and Central Europe. He reluctantly admits that the Baltic Republics have definitively disappeared from the map as independent states. Russia's resistance to ideas such as the author's is shown by her haste in more or less unilaterally setting up a cordon sanitaire à rebours and by the fact that all the new "friendly" governments from Helsinki to Vienna and Yugoslavia have Communists either at the top (Marshall Tito, Lublin Government) or in the all-important posts of the interior, education, and propaganda.

The author further underestimates the enormous differences between the countries which he wants to federate, especially between Eastern and Central Europe. Contrary to his opinion on p. 9, what greater difference could there be than between a Viennese and a Macedonian inhabitant of Skoplje, between a progressive, democratic, Czech bourgeois and an illiterate, barefoot

Ruthenian peasant of Podwoloczyska?

The author admits that his program constitutes a tremendous task and that it can be realized only through the peoples themselves. Has the war really done away with the tremendous nationalism, the bitter feelings between Czechs and Poles, Czechs and Magyars, Magyars and Rumanians, even between Serbs and Croatians? As a long-range plan, the exclusion of Germany, although now psychologically only too well understandable, is a basic weakness.

This reviewer naturally wishes Europe well but his intimate knowledge and experience of things European makes him rather pessimistic about the future of this unhappy Continent.

Josef L. Kunz

Of the Board of Editors

Prejudice: Japanese-Americans, Symbol of Racial Intolerance. By Carey McWilliams. Boston: Little, Brown; 1944. Pp. ix, 337. Index. \$3.00. About two years ago Carey McWilliams wrote Brothers Under the Skin, in which he discussed the treatment accorded to racial minorities in the United States with lucidity, with frankness and with authority backed up by facts and figures which could not be controverted. From these facts he drew certain grim conclusions in the field of international relations—notably that there can be no real prospect of international peace in the long run unless white men abandon their racial imperialism—and pleaded that the United States should accord, in actual practice, equality before law for all racial elements within its borders.

Mr. McWilliams, with a fellowship from the John Simon Guggenheim Foundation and at the request of the American Council of the Institute of Pacific Relations, carried on further extensive researches concerning the "racial war," often silent and hidden, but bitter and unrelenting, against the Japanese in America and concerning recent developments regarding the actual status of American-born Japanese—American citizens in legal principle—and Japanese aliens who cannot become citizens of the United States, even if they so desire, since "the days of Pearl Harbor." The result of this

study is the book under review.

In his chapter "The California-Japanese War (1900-1941)," the author presents one of the best concise and factual discussions available regarding one of the root causes of the present American-Japanese war. He disproves the contention that the Japanese-Americans lowered the standard of living of the Californians and establishes the fact that the labor of the Japanese in the development of marsh lands and desert lands has, on the contrary, enriched the State and helped in the development of agricultural products which has benefited the people of the whole country. He also establishes the fact that, although the Asiatic Exclusion Act was promoted by Californians, "it is also a matter of record that the racist views of some eminent sociologists such as Prof. E. A. Ross, Madison Grant, Lothrop Stoddard, and Henry Fairchild Osborn were influential in securing passage of the act" (p. 67). It is impossible to escape the conclusion that the American attitude towards Japanese immigration has had a major influence on the relationship of the two countries. It provided the Japanese militarists material with which to carry on anti-European and anti-American and at the same time Pan-Asian propaganda with effectiveness not only in Japan but all over Asia. This is an unpleasant truth often glossed over by American scholars (p. 68).

The rest of the work is devoted to "evacuation of the Japanese from the Pacific Coast States," establishment of relocation camps, the problems of their resettlement, and the difficult problems of the future for these Japanese-Americans who are victims of race prejudice. Mr. McWilliams argues that if the Japanese in Hawaii did not prove to be a military menace and were not sent to detention camps, but, on the contrary, have contributed their share towards the victory of the American cause, then the wholesale uprooting of the Japanese from California and other Pacific Coast States, on

the ground of military necessity, is untenable. He discloses some of the unsavory political reasons for the action taken which will be of great interest to students of the internal politics of the State of California with its bearing on the national and international politics of the United States. To be sure, war makes for harsh measures; but unfortunately we cannot justify the evacuation of the West Coast Japanese even as a war measure. This contention of the author has been strengthened by the opinion of Dr. Robert Redfield: "It is doubtful if any deprivation of civil rights so sweeping and categoric as this has ever been performed under the war powers and justified by our courts." The very core of the problem "lies in the fact that the evacuation and confinement were done on racial basis." The author then contends that "A precedent of the gravest possible significance has been established in ordering the removal and internment of this one racial minority. . . . For perhaps the first time in our national history the Federal Government has singled out for particularly harsh treatment a section of our population and has based the discrimination solely on racial ground (more accu-

rately, perhaps, on the ground of ancestry)" (pp. 4-5).

The author gives full measure of praise to the American officials for their sympathetic and efficient handling of a most difficult job in the relocation centres and gives some of the details as to how the Japanese themselves contributed largely to the success of the action and also how they aided the efforts in relieving food shortages as agricultural laborers. The author gives a detailed account of what has happened to the property of the vast majority of the Japanese who were forced to leave their homes and come to the fol-

lowing conclusion (pp. 138-139):

Even after evacuation was a foregone conclusion, the Federal Government failed to set up any satisfactory system of property custodianship. The Government agencies to which were delegated responsibility in the matter in most cases either tried to evade this responsibility or joined in pressuring the Japanese to dispose of their holdings quickly and in a haphazard fashion. The grossest impositions were practised upon the Japanese, ranging from petty chiseling to large-scale fraud.

The agitation against allowing the Japanese-Americans to return to their own homes in the Pacific Coast States and thus depriving large numbers of American citizens of their birthright is motivated by racial prejudice and

sordid economic greed.

Problems of racial and religious minorities in the United States, generally based upon discriminatory practices, do not receive adequate attention from those Americans who are deeply interested in world security and a new world order based on Justice, Freedom, and Equality. For this very reason, Mr. McWilliams's courageous and thought-provoking work should be read by all who are interested in preserving American democracy in its true spirit. The author makes the plea that if we are fighting against Nazism and to uphold the sacred rights of man then we must not deprive, through legal sanctions of dubious character, or by mob violence, American citizens of Japanese ancestry or any minority group of their inalienable rights.

TARAKNATH DAS

The College of the City of New York

Solution in Asia. By Owen Lattimore. Boston: Little, Brown; 1945. Pp. ix, 214. Index. \$2.00. In the post-war world Asia, with nearly a bil-

lion people steadily roused by the world-shaking events of the last quarter of a century and by revolutionary nationalism (pp. 70–73), the extent of which is often minimized and misunderstood by so-called experts, will loom large. Various issues involving the political, economic, and cultural emancipation of the Asian peoples, including the practice of equality before the law for all peoples irrespective of race and color, will have to be solved by enlightened statesmanship on the part of powerful Western nations. If they fail to solve these issues the world will be faced with another catastrophe of vast

magnitude.

Mr. Lattimore, with intimate knowledge of China proper, Mongolia, and all the countries of Eastern Asia, in his Solution in Asia discusses various problems with keen insight and a sense of American responsibility for the New World Order, promising really democratic practices and leading to the end of colonial imperialism in Asia. The importance of this small volume can be measured by the subjects discussed with courage and conviction: 1. Importance of Asia in War and Politics; 2. Japan, Exponent of Cut-rate Imperialism; 3. Revolution and Nationalism in China; 4. China's Party Politics; 5. War, Prestige, and Politics; 6. The Politics of Attraction; 7. Political Nature of Security; 8. An American Policy in Asia. It is written in clear and vigorous language and scholars as well as laymen will find it to

be stimulating and instructive.

The chapter on "Politics of Attraction" is highly suggestive and valuable. The author makes it clear that at the present time Russia, America, and China for various reasons are points of attraction to the peoples of Asia. The peoples of Asia were attracted to Russia because "they wanted to escape from colonial subjection. They wished the Russians well because the nations which were hostile to the emancipation of colonies were also hostile to Russia." With the growth of military and economic power (industrial development), as demonstrated by her success in World War II, Russia's power of attraction has been augmented. If China can demonstrate her ability to develop a strong unified state and bring about technological revolution and champion the cause of Asian Freedom and the rights of minorities within her vast domain her power of attraction also will grow and it may be expected that East Asia will rally to her leadership. America does not favor colonial imperialism. This has been demonstrated by her policy in the Philippines and towards other Asian peoples. This has made America popular and respected in all Asia. But if America, directly or indirectly, supports the colonial Powers of Europe in their policy of keeping the peoples of Asia under subjection she will lose her power of attraction which will be detrimental to the interests of the American and Asian peoples and their security. From this point of view Mr. Lattimore urges that America should adopt a definite policy of "rapid emancipation" of all colonial peoples in

As in the past so in the future Asia will become the most significant factor in world politics. Mr. Lattimore closes his book with the following passage which may well serve as food for thought for American statesmen:

Asia will largely determine the degree to which the capitalist and the collectivist world can coöperate. The value and significance of freedom for newly free peoples will also be put to the proof first and foremost in Asia. No longer, therefore, can we think of Asia simply as an area of overflow for our surplus energies. Asia will become, instead, a testing ground for all our theories and ways of doing things. Failure in Asia

would doom our hopes for a cooperative world order. Success in Asia would prove the survival value of post-war world order toward which we are working. The time has come to give Asiatic policy a top priority in America's relations with the world.

TARAKNATH DAS

College of the City of New York

The Gentlemen Talk of Peace. By William B. Ziff. New York: Macmillan; 1944. Pp. vii, 530. Index. \$3.00. Declaring that all plans for international organization and world peace "possess the fatal flaw of ignoring certain basic facts" and that "without exception, their authors wish to eat their cake and have it too" (p. v), Mr. Ziff writes a book which itself discounts several basic facts. Advancing a "sound working proposal" to regroup the countries of the World "into a limited number of self-contained Power Aggregates, each capable of sustaining itself through its own markets and resources" (p. 454), he apparently identifies economic grievances as the major if not the sole cause of war to the exclusion of several others. Can it be demonstrated that Germany or Japan were motivated exclusively or even primarily by economic considerations in 1939 and 1941? "Lebensraum" was less a cause than an excuse; "Hakko-ichiu" (Eight Corners under One Roof) springs in part from dynastic and political inspiration for world con-Nevertheless Mr. Ziff's belief that the "three major partners of the United Nations" could, if they chose, herd the States of the World into five Power Aggregates approximates the fact, to which "the remaining states of the world would have no other choice than to adjust themselves" (p. 455). A fascinating partition of the World into five regions (pp. 456-505) envisages a United Europe (west of Russia, north of Lake Chad and the Niger River in Africa, and east of the Tigris River in Asia Minor); the Soviet Union (east of the Carpathian Mountains and north of a corridor to the Persian Gulf); a United Orient (comprising the remainder of Asia); a Union of the West (including America, Australia, New Zealand, the Philippines and Pacific Islands west of Java and Borneo—they being attached to the Soviet Union); and a provisional negro commonwealth in Africa south of United Europe's This is advocated as a "compromise between the ideal of African territory. international society and the existing era of international discord and discorder" (p. 506), in which each region "would have all the attributes of the universal state and would be that state in miniature." They must be "bound together in some sort of loose union" (p. 511) with a permanent capital on some island "such as St. Helena" (p. 513) and possessing no police power beyond that needed to maintain order on that island.

It is anticipated that there "would be no investment by any of the Power Aggregates in each other's territories" (p. 513), such as "American ownership of Arabian oil or Chinese airways" (p. 514), existing alien ownerships being liquidated by the World Court. "Trade would be kept in balance for each fiscal period . . . the sole criterion in all large-scale international business being the value of the materials involved and the relative energy-hours required to produce and transport them" (p. 515). Racial and cultural problems would dissolve with the erasure of present political boundaries; "ancient points of pressure and historic antagonisms" should be remedied with "the same genuine concentration of forces utilized by governments in the critical moments of war" (p. 518), by processes of social engineering which fit in "with the premises of a workaday world in a tech-

nical age" (p. 519). There is much to commend this project to seekers for peace who can bring themselves to believe that the resultant regions would be cooperative rather than combative and that their components would be recordled to such status as is assigned to them. The history of mankind offers little basis for optimism, however,—or is it contemplated that peoples and nationalities are to be kept in line by force?

W. LEON GODSHALL

Lehigh University

The Common Interest in International Economic Organization. By J. B. Condliffe and A. Stevenson. Montreal: International Labor Office; 1944. Pp. vi, 135. Appendix. Index. \$1.00. At its last session in Philadelphia (April-May, 1944) the International Labor Conference adopted a resolution "recognizing that a satisfactory international monetary system is essential to the full development of mutually advantageous economic relations between nations . . . , noting that imports of capital will be needed for reconstruction, development, and the raising of living standards in many countries . . . , recognizing the great contributions which the international exchange of goods and services can make to higher living standards and to high levels of employment."

Messrs. Condliffe and Stevenson have undertaken here the task of presenting the case for an expanding volume of world trade, for a workable international monetary mechanism, and for international capital movements, in the name of the International Labor Organization. They list as the objectives of post-war planning: full employment, social security, economic development, and with an excusable tour-de-force of substituting means for ends, international collaboration. Within the ideological framework of these general objectives, and within the institutional framework of monopolistic competition characterized by large-scale production, concentration of economic power—through monopolies and cooperating organizations nationally, and cartel agreements and commodity controls internationally—the place of international economic intercourse is examined and restated in refreshingly novel terms.

The new element in the approach flows from the emphasis placed on the necessity of measures of economic policy which are essential for the attainment of the benefits of a large volume of economic intercourse in an economic environment which is characterized by a constantly increasing area of normative interference (which, to be sure, may take the place of private controls). Thus, the classical free-trade position with its promise of automatic self-regulation is modernized and fitted into a societal arrangement which becomes more and more subject to controls. The authors make it adequately clear that in their opinion the rigidities and controls of existing economic systems are not, per se, disadvantageous to the international exchange of goods and services. They result in a limitation of international flows only if they are restrictive, either by design (which would be a "wrong" policy), or by the perpetuation of policies which were originally conceived as temporary corrective measures.

In one important respect the book goes one step further than other treatises on the same subject: in order to avoid disturbances in the sphere of international economic interaction, and to assure the successful operation of economic policies on the national level, it is necessary to coordinate national policies of high-level employment. It is proposed (p. 93) that this be done

through "international arrangements" which, by implication, would become the main task of the Economic Council of the new international organization. It is interesting to observe that this problem of "coördination" emerges gradually in contemporary economic contemplations of a theoretical and normative nature as the most important premise of successful action. The recent League of Nations study on the problems of the transition from war to peace (League of Nations, Economic and Financial Section: The Transition from War to Peace Economy, Part I, 1943) pleads for the coördination of the relaxation of war controls. The current discussion on the interpretation of the authority of the International Fund under the Bretton Woods agreements is, in essence, a controversy about the permissibility of unilateral full-employment policies. In the light of this discussion one may well argue that the basic issue, as yet, is not the international coördination of full-employment policies but the recognition of a sustained high level of employment as a primary objective of national policies, particularly in the United States.

The only minor flaw in the book worth mentioning is the rather non-committal "explanation" of cyclical unemployment as the result "of a breakdown in price relationships impeding the exchange of goods and services." This colorless phrase is the more unnecessary since the authors show later (p. 97) when they deal with the fluctuations in the rate of private investments that they know exactly what they have in mind.

J. Hans Adler

Washington .

International Cartels in the Postwar World. By J. Anton deHaas. ington: American Enterprise Association; 1944. Pp. 50. Appendix. Professor deHaas discusses in his interesting and stimulating study current conceptions and misconceptions about cooperation of private entrepreneurs (and governments) in the marketing of commodities in international trade. The author attributes the violent opposition against international market controls to a set of unfounded assumptions, political and economic, which he considers onesided and not supported by a comprehensive empirical investigation. In the opinion of Mr. deHaas a cartel, like other organized agglomerations of social power, may be used for either socially undesirable or desirable purposes. Under proper regulation, national and international, it may become a workable organizational pattern for the moderation of business fluctuations and to serve balanced expansion of world trade. The author regards coördination of activities in international economic intercourse, by agreements of private entrepreneurs or governments, as the only possible course if unregulated chaos is to be avoided. He does not deny that cartel members occasionally abused economic power in the past. However, he does not conclude that such abuses are inherent in international market coöperation. He suggests that "no agreement be made except with the full knowledge of the government cartel commission and always subject to its approval." An adequate critical review of Professor deHaas' little study would require space almost transcending the extent of his thoughtprovoking work. The student of international relations who is conversant with customary treatments of this subject will find here a different approach to the important problem of international cartels.

ERVIN HEXNER

The University of North Carolina

Political Handbook of the World. By Walter H. Mallory, ed., 1945. New York: Harper; 1945. Pp. vi, 197. \$2.75. This well-established and generally valuable reference work has been brought up to date, giving the major skeleton facts concerning governments, parliament, parties, and the press in the countries of the world as of January 1, 1945. Brief quotations from constitutions and other important laws are included. As usual the data are based on both official and private sources which are not cited but which the editor considers reliable.

A few questions may be raised in an effort to offer helpful criticism. The statement that the National Socialist Party, "demanded particularly the abrogation of the Versailles Treaty, equality of armaments, and the eventual union of all Germanic peoples in one German State" (p. 71), appears to be something of an understatement of its admittedly "aggressive nationalistic policy." Possibly this statement was taken over unchanged from some edition published prior to 1938. We would hate to have an editorial writer—or a student—depend on that characterization. And is "geographical" an adequate description of the "character" (p. 72) of Karl Haushofer's Zeitschrift fur Geopolitik? Further, the designation of the Speaker of the House of Commons as "Conservative" (p. 74) is misleading since it is his traditional duty to be absolutely non-partisan. Although the Third International has been abolished its "British section" is still listed (p. 77) as the publisher of the London Daily Worker.

Several countries previously listed but overrun by the armies of the Axis have been omitted in this edition on the ground that "their status will not be finally determined until the end of the war" (Foreword). Why should

Ethiopia be listed among them?

In spite of these questions and possibly others of a similar nature, we are grateful for this helpful compendium.

John Brown Mason

Washington

The Jewish Refugee. By Arieh Tartakower and Kurt R. Grossmann. New York: Institute of Jewish Affairs of the American Jewish Congress and World Jewish Congress; 1944. Pp. xiii, 676. Appendixes. Index. \$5.00. This is the story of the Jewish refugee—a dispassionate and objective record of the millions of Jews who were driven out of their own countries, losing thereby both their properties and their professional positions. It is, at the same time, the story of the lack of understanding and callousness of governments which closed the doors of their countries in the face of people in deadly danger. Another aspect—and not the least important—of the mentality of appeasement is revealed, a chapter which is not yet closed by any means. The complete failure of intergovernmental efforts to aid the refugees,—the Office of High Commissioner for Refugees, the Evian and the Bermuda Conferences,—is described.

The authors tell first about the Jewish refugees during and after World War I. The bulk of the book deals with the various countries of refuge and settlement, each of them in a special chapter. Palestine is reported upon first. One of the most horrifying accounts appears in this chapter. The authors compiled a list of 28 ships in which Jewish refugees tried to migrate to Palestine "illegally" in 1939 and 1940. The list starts with a Greek boat carrying 700 passengers—this boat was fired at by the English. The unfortunate Struma, which sank with 700 passengers, but two of them surviving, is mentioned. The list ends: "Two unknown boats, 3000 passengers; fate of

boats unknown." The chapter on France, written by Henri Sinder, gives a vivid account of the atrocities committed by the Vichy Government. In the chapter on Great Britain the laws and regulations pertaining to aliens and refugees are presented. There is also a statistical chapter though the authors admit that some of the statistics may not be completely reliable. The enormous efforts and achievements of private Jewish organizations form the topic of another chapter. In the last chapter possible solutions are discussed and a new international agency to be created after the war is pro-This agency should consist of official representatives of governments and should be entrusted with the complete work of repatriation, emigration, and colonization; its funds should be contributed by a new League of Nations or by all the states. This demand is certainly fully justified. The problem of the Jewish refugees is an international problem par excellence, it can never be solved by isolated efforts of the single states. The handling of this problem will be a precedent-setting test of future international coöperation.

The book would have gained if the presentation had been more condensed

The book would have gained if the presentation had been more condensed and repetitions had been avoided. But an imposing array of facts has been

carefully collected; the bibliography contains nearly 900 items.

F. SCHREIER

New York City

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WILBUR S. FINCH

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STATUTE CONCERNING THE FOREIGN SERVICE

Public Law 48, 79th Congress; May 3, 1945

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. It is the purpose of the Congress to enable the Department of State, pursuant to its responsibilities under the Constitution and statutes of the United States, more effectively to carry out its prescribed and traditional responsibilities in the foreign field; to strengthen the Foreign Service permitting fullest utilization of available personnel and facilities of other departments and agencies and coördination of activities abroad of the United States under a Foreign Service for the United States unified under the guidance of the Department of State.

SEC. 2. That section 1 of the Act entitled "An Act for the grading and classification of clerks in the Foreign Service of the United States of America, and providing compensation therefor," as amended, is hereby amended to read as follows:

"Section 1. The administrative, fiscal, and clerical personnel of the Foreign Service of the United States of America shall be graded and classified as follows, and shall receive, within the limitation of such appropriations as the Congress may make, the basic compensation specified, and shall, within the salary range indicated, be entitled to administrative promotions in compensation which shall be made in accordance with the laws prescribing promotion of civil-service personnel as respects the administrative groups and under such rules and regulations as the Secretary of State may prescribe for senior and junior clerks:

"Administrative officers: Class I, \$4,600 to \$5,600; class II, \$3,800 to \$4,600; class III, \$3,500 to \$4,100.

"Administrative assistants: Class I, \$3,200 to \$3,800; class II, \$2,900 to \$3,500; class III, \$2,600 to \$3,200.

"Clerks: Class I, senior clerks, \$2,300 to \$2,900; class II, junior clerks, all clerks whose compensation as fixed by the Secretary of State is less than \$2,300 per annum."

SEC. 3. That section 3 of the Act of February 23, 1931, as amended, is amended to read as follows:

"Sec. 3. The Secretary of State is hereby authorized to grant at all posts, allowances for living quarters, heat, light, fuel, gas, and electricity, and at posts where in his judgment it is required by the public interests for the purpose of meeting the unusual or excessive costs of living ascertained by him to exist, to grant post allowances to clerks assigned there and also to

other employees of the Foreign Service of the United States who are American citizens, within such appropriations as Congress may make for said purpose: Provided, That all such allowances shall be accounted for to the Secretary of State in such manner and under such rules and regulations as the President may prescribe, and the authorization and approval of such expenditures by the Secretary of State as complying with such rules and regulations shall be binding upon all officers of the Government: Provided, however, That all such allowances and the reasons therefor shall be reported to the Congress with the annual budget."

Sec. 4. That paragraph (a) of section 10 of the Act of February 23, 1931, as amended, is hereby amended to read:

"Sec. 10. (a) The officers in the Foreign Service of the United States shall hereafter be graded and classified as follows, with the salaries of each class herein affixed thereto, except as increases in salaries are authorized in section 33 of this Act:

"Ambassadors and Ministers, as now or hereafter provided; Foreign Service officers as follows: Class I, \$9,000 to \$10,000; class II, \$8,000 to \$8,900; class III, \$7,000 to \$7,900; class IV, \$6,000 to \$6,900; class V, \$5,000 to \$5,900; class VI, \$4,500 to \$4,900; class VII, \$4,000 to \$4,400; class VIII, \$3,500 to \$3,900; unclassified; \$2,500 to \$3,400: Provided, however, That as many Foreign Service officers above class VI as may be required for purposes of inspection may be detailed by the Secretary of State for that purpose."

Sec. 5. That section 10 of the Act of February 23, 1931, is further amended by adding at the end thereof the following new paragraph (c):

(c) The Secretary of State is hereby authorized to assign for special duty as officers of the Foreign Service for nonconsecutive periods of not more than four years, qualified persons holding positions in the Department of State, and, at his request, qualified persons holding positions in any other department or agency of the United States who have rendered not less than five years of Government service, and persons so assigned shall be eligible during the periods of such assignment to receive the allowances authorized by the provisions of section 19 of this Act. Persons assigned under the authority of this section shall be eligible to receive all benefits provided by civil-service law and regulation in the same manner and subject to the same conditions as though they were serving in their regular civilservice positions and upon termination of their assignment shall be reinstated in the respective department or agency from which loaned. salaries and allowances of such persons shall, notwithstanding the provisions of any other law, be paid throughout the periods of such assignments from the appropriations provided for the Department of State."

SEC. 6. Section 14 of the Act of February 23, 1931, is amended to read as follows:

"SEC. 14. That the Secretary of State is directed to report from time to time to the President, along with his recommendations, the names of those

Foreign Service officers who by reason of efficient service have demonstrated special capacity for promotion to the grade of minister or ambassador and the names of those Foreign Service officers and clerks and officers and employees in the Department of State who by reason of efficient service, an accurate record of which shall be kept in the Department of State, have demonstrated special efficiency, and also the names of persons found upon taking the prescribed examination to have fitness for appointment to the Service, and any Foreign Service officers who may hereafter be promoted to a higher class within the classification prescribed in section 10 of this Act, as amended, shall have the status and receive the compensation attaching to such higher class from the date stated in his commission as the effective date of his promotion to such higher class."

SEC. 7. Section 16 of the Act of February 23, 1931, is amended to read as follows:

That every secretary, consul general, consul, vice consul, or Foreign Service officer, and, if required, any other officer or employee of the Foreign Service or of the Department of State before he enters upon the duties of his office shall give to the United States a bond in such form and in such penal sum as the Secretary of State shall prescribe, with such sureties as the Secretary of State shall approve, conditioned without division of penalty for the true and faithful performance of his duties, including (but not by way of limitation) certifying vouchers for payment, accounting for, paying over, and delivering up of all fees, moneys, goods, effects, books, records, papers, and other property that shall come to his hands or to the hands of any other person to his use as such officer or employee under any law now or hereafter enacted and for the true and faithful performance of all other duties now or hereafter lawfully imposed upon him as such officer or employee, and such bond shall be construed to be conditioned for the true and faithful performance of all official duties of whatever character now or hereafter lawfully imposed upon him, or by him assumed incident to his employment as an officer or employee of the Government: Provided, That notwithstanding any other provisions of law, upon approval of any bond given pursuant to this Act, the principal shall not be required to give another separate bond conditioned for the true and faithful performance of only a part of the duties for which the bond given pursuant to this Act is conditioned: Provided further, That the operation of no existing bond of a Foreign Service officer or vice consul shall in any way be impaired by the provisions of sections 1-23, 23f-23l, title 22, of the United States Code: Provided further, That the bond of a Foreign Service officer shall be construed to be conditioned for the true and faithful performance of all acts of such officer incident to his office regardless of whether commissioned as diplomatic, consular, or Foreign Service officer. The bonds herein mentioned shall be deposited with the Secretary of the Treasury: Provided further, That nothing herein contained shall be deemed to obviate the necessity of furnishing any

bond which may be required pursuant to the provisions of the Subsistence Expense Act of 1926, as amended."

SEC. 8. Section 19 of the Act of February 23, 1931, is amended to read as follows:

"SEC. 19. Under such regulations as the President may prescribe and within the limitations of such appropriations as may be made therefor, which appropriations are authorized, ambassadors, ministers, diplomatic, consular and Foreign Service officers may be granted allowances for living quarters, heat, light, fuel, gas, and electricity; for representation; and also post allowances wherever the cost of living may be proportionately so high that in the opinion of the Secretary of State such allowances are necessary to enable such diplomatic, consular, and Foreign Service officers to carry on their work efficiently: Provided, That all such allowances shall be accounted for to the Secretary of State in such manner and under such rules and regulations as the President may prescribe and the authorization and approval of such expenditures by the Secretary of State as complying with such rules and regulations shall be binding upon all officers of the Government: Provided further, That the Secretary of State shall report all such expenditures annually to the Congress with the Budget estimates of the Department of State."

SEC. 9. Section 21 of the Act of February 23, 1931, is amended to read as follows:

"SEC. 21. That any Foreign Service officer may be assigned for duty in the Department of State or in any department of agency of the Government in the discretion of the Secretary of State without loss of class or salary, such assignment to be for a period of not more than three years unless the public interest demands further service, when such assignment may be extended for a period not to exceed one year, upon completion of which four-year assignment and reassignment to the field, he may not again be assigned for duty in the Department of State or in any other department or agency of the Government until the expiration of at least three years of field duty. ambassador or minister, or any Foreign Service officer of whatever class, detailed for duty in connection with trade conferences, or international. gatherings, congresses, or conferences, or for other special duty not at his post or the Department of State, except temporarily for purposes of consultation, shall be paid his salary and expenses of travel and subsistence at the rates prescribed by law."

Sec. 10. Section 31 of the Act of February 23, 1931, is amended to read as follows:

"Sec. 31. There shall be in the Department of State a Board of Foreign Service Personnel for the Foreign Service, whose duty it shall be to recommend promotions in the Foreign Service and to furnish the Secretary of State with lists of Foreign Service officers who have demonstrated special capacity for promotion to the grade of Minister or Ambassador. The Board shall be composed of not more than three Assistant Secretaries of

State, one of whom shall be the Assistant Secretary of State having supervision over the Division of Foreign Service Personnel and who shall be Chairman, an officer of the Department of Commerce designated by the Secretary of Commerce and acceptable to the Secretary of State, and an officer of the Department of Agriculture designated by the Secretary of Agriculture and acceptable to the Secretary of State. The officer of the Department of Commerce shall sit as a member of the Board only when nominations and assignments of commercial attachés, the selection or assignment of Foreign Service officers for specialized training in commercial work or other matters of interest to the Department of Commerce are under consideration; the officer of the Department of Agriculture shall sit as a member of the Board only when nominations and assignments of agricultural attachés, the selection or assignment of Foreign Service officers for specialized training in agricultural work or other matters of interest to the Department of Agriculture are under The Chief of the Division of Foreign Service Personnel of the Department of State and one other member of that Division may attend the meetings of the Board and one of them shall act as secretary but they shall not be entitled to vote at its proceedings. No Foreign Service officer below class I shall be assigned as Chief of the Division of Foreign Service Personnel, nor shall such officer be given any authority except of a purely advisory character over promotions, demotions, transfers, or separations from the service of Foreign Service officers. The Director of the Office of the Foreign Service shall be assigned from among officers of the Foreign Service, but no Foreign Service officer below class I shall be so assigned."

SEC. 11. Revised Statutes 1699, 1700, and 1701 are hereby repealed.

SEC. 12. Section 7 of the Act of February 5, 1915 (38 Stat. 807), restricting the transaction of business by diplomatic officers, shall apply, with the exception of consular agents, to all officers and employees of the Foreign Service.

Approved May 3, 1945.

GREAT BRITAIN

STATUTE CONCERNING PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATION *

7 & 8 Geo. 6, C.44; November 17, 1944

An Act to make provision as to the immunities, privileges and capacities of international organisations of which His Majesty's Government in the United Kingdom and foreign governments are members; to confer immunities and privileges on the staffs of such organisations and representatives of member governments and in respect of premises and documents of such organisations; to remove doubts as to the extent to which representatives of foreign Powers attending international conferences and the * Diplomatic Privileges (Extension) Act, 1944. Text from British Information Services.

staffs of such representatives are entitled to diplomatic immunities; to amend the Diplomatic Privileges (Extension) Act, 1941; and for purposes connected with the matters aforesaid.

[17th November 1944.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

- 1.—(1) This section shall apply to any organisation declared by Order in Council to be an organisation of which His Majesty's Government in the United Kingdom and the government or governments of one or more foreign sovereign Powers are members.
 - (2) His Majesty may by Order in Council-
 - (a) provide that any organisation to which this section applies (hereinafter referred to as "the organisation") shall, to such extent as may be specified in the Order, have the immunities and privileges set out in Part I of the Schedule to this Act, and shall also have the legal capacities of a body corporate;
 - (b) confer upon such number of officers of the organisation, other than British subjects, as, may be specified in the Order, being the holders of such high offices in the organisation as may be specified in the Order, and upon any person who is the representative of a member government on the governing body or any committee of the organisation, to such extent as may be so specified, the immunities and privileges set out in Part II of the Schedule to this Act;
 - (c) confer upon such other classes of officers and servants of the organisation (including British subjects holding such high offices as aforesaid or representing any member government as aforesaid) as may be specified in the Order to such extent as may be so specified, the immunities and privileges set out in Part III of the Schedule to this Act:

Provided that the Order in Council shall not confer any exemption from taxes or rates upon any person who is a British subject and whose usual place of abode is in the United Kingdom.

- (3) Where immunities and privileges are conferred on any persons by an Order in Council made under the last foregoing subsection, the Secretary of State—
 - (a) shall compile a list of the persons entitled to immunities and privileges conferred under paragraph (b) of that subsection, and may compile a list of the persons entitled to immunities and privileges conferred under paragraph (c) of that subsection;
 - (b) shall cause any list compiled under this subsection to be published in the London, Edinburgh and Belfast Gazettes; and

- (c) whenever any person ceases or begins to be entitled to the immunities and privileges to which any such list relates, shall amend the list and cause a notice of the amendment, or, if he thinks fit, an amended list, to be published as aforesaid.
- (4) Every list or notice published under the last foregoing subsection shall state the date from which the list or amendment takes or took effect; and the fact that any person is or was included or not included at any time among the persons entitled to the immunities and privileges in question may, if a list of those persons has been so published, be conclusively proved by producing the Gazette containing the list, or, as the case may be, the last list taking effect before that time, together with the Gazettes (if any) containing notices of the amendments taking effect before that time, and by showing that the name of that person is or was at that time included or not included in the said list.
- (5) Where privileges and immunities are conferred under paragraph (a) or paragraph (b) of subsection (2) of this section upon any organisation or person, section seventy-eight of the War Damage Act, 1943 (which relates to the payment of contributions in respect of property owned by a foreign State or the Sovereign or envoy of a foreign State) shall apply to that organisation or person in like manner as it applies to a foreign State or the envoy of a foreign State.
- (6) This section and the next following section shall remain in force for the period of five years beginning with the date of the passing of this Act and shall then expire:

Provided that, if at any time while the said sections are in force an address is presented to His Majesty by each House of Parliament praying that the said sections shall be continued in force for a further period not exceeding five years after the time at which they would otherwise expire, His Majesty may by Order in Council direct that the said sections shall continue in force for that further period.

- 2.—(1) Every Order in Council made under subsection (1) or subsection (2) of the last foregoing section shall be laid as soon as may be before Parliament, and if an address is presented to His Majesty by either House of Parliament, within the period of forty days beginning with the day on which any such Order is laid before it, praying that the Order be annulled, His Majesty in Council may annul the Order and it shall thereupon cease to have effect, but without prejudice to the validity of anything done thereunder in the meantime or to the making of a new Order.
- (2) In reckoning the said period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days.
- (3) Section one of the Rules Publication Act, 1893, shall not apply to any such Order in Council.

- (4) Any such Order in Council may be varied or revoked by a subsequent Order in Council made in like manner.
- 3.—(1) Where a conference is held in the United Kingdom and is attended by the representatives of His Majesty's Government in the United Kingdom and the government or governments of one or more foreign sovereign Powers, and it appears to the Secretary of State that doubts may arise as to the extent to which the representatives of such foreign Powers and members of their official staffs are entitled to diplomatic immunities, he may—
 - (a) compile a list of the persons aforesaid who are entitled to such immunities, and cause that list to be published in the London, Edinburgh and Belfast Gazettes; and
 - (b) whenever it appears to the Secretary of State that any person ceases or begins to be entitled to such immunities, amend the list and cause a notice of amendment or, if he thinks fit, an amended list, to be published as aforesaid;

and every representative of a foreign Power who is for the time being included in the list shall, for the purpose of any enactment and rule of law or custom relating to the immunities of an envoy of a foreign Power accredited to His Majesty, and of the retinue of such an envoy, be treated as if he were such an envoy, and such of the members of his official staff as are for the time being included in the list shall be treated for the purpose aforesaid as if theywere his retinue.

- (2) Every list or notice published under the last foregoing subsection in relation to any conference shall include a statement of the date from which the list or amendment takes or took effect; and the fact that any person is or was included or not included at any time among the persons entitled to diplomatic immunities as representatives attending the conference or as members of the official staff of any such representative may, if a list of those persons has been so published, be conclusively proved by producing the Gazette containing the list or, as the case may be, the last list taking effect before that time, together with the Gazettes (if any) containing notices of the amendments taking effect before that time, and by showing that the name of that person is or was at that time included or not included in the said list.
- 4. Nothing in the foregoing provisions of this Act shall be construed as precluding His Majesty from declining to accord immunities or privileges to, or from withdrawing immunities or privileges from, nationals or representatives of any Power on the ground that that Power is failing to accord corresponding immunities or privileges to British nationals or representatives.
- 5. Where diplomatic privileges and immunities have been extended by the Diplomatic Privileges (Extension) Act, 1941, to the members of the government of any foreign Power or of a provisional government, or to the members of any national committee or other foreign authority and, since such extension took effect, the government, committee or authority has ceased to be established, or has ceased to be wholly established, in the United Kingdom.

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the Act shall nevertheless continue to apply (so long as it remains in force), and be deemed never to have ceased to apply, in relation to members of that government, committee or authority, or persons employed on the official staff of any such member, who perform their functions wholly or partly in the United Kingdom.

6. This Act may be cited as the Diplomatic Privileges (Extension) Act, 1944.

SCHEDULE

PART T

Immunities and Privileges of the Organisation

- 1. Immunity from suit and legal process.
- 2. The like inviolability of official archives and premises occupied as offices as is accorded in respect of the official archives and premises of an envoy of a foreign sovereign Power accredited to His Majesty.
- 3. The like exemption or relief from taxes and rates, other than taxes on the importation of goods, as is accorded to a foreign sovereign Power.
- 4. Exemption from taxes on the importation of goods directly imported by the organisation for its official use in the United Kingdom or for exportation, such exemption to be subject to compliance with such conditions as the Commissioners of Customs and Excise may prescribe for the protection of the Revenue.

PART II

Immunities and Privileges of High Officers and Government Representatives

- 1. The like immunity from suit and legal process as is accorded to an envoy of a foreign sovereign Power accredited to His Majesty.
 - 2. The like inviolability of residence as is accorded to such an envoy.
- 3. The like exemption or relief from taxes and rates as is accorded to such an envoy.

PART III

Immunities and Privileges of Other Officers and Servants

- 1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.
 - 2. The following exemption or relief from taxes and rates:
 - (a) in the case of a British subject who is a national or citizen of, or belongs to, any part of His Majesty's dominions outside the United Kingdom and would, if he were not a British subject, be qualified to receive the immunities and privileges set out in Part II of this Schedule, the like exemption or relief from taxes and rates as is accorded to an envoy of a foreign sovereign Power accredited to His Majesty;
 - (b) in any other case exemption from income tax in respect of emoluments received as an officer or servant of the organisation.

UNITED STATES—GERMANY—GREAT BRITAIN—SOVIET UNION

UNCONDITIONAL SURRENDER OF GERMAN AND ITALIAN FORCES AT CASERTA*

May 2, 1945

Enemy land, sea, and air forces commanded by General von Vietinghoff-Scheel have surrendered unconditionally to Field-Marshal Sir Harold Alexander. The terms of the surrender provide for the cessation of hostilities at 12 noon G.M.T. Wednesday, May 2, 1945.

The instrument of surrender was signed on Sunday afternoon, April 29, at Allied Force Headquarters at Caserta by two German plenipotentiaries and by Lieutenant-General W. D. Morgan, chief of staff of Allied Force Headquarters. One German representative signed on behalf of General von Vietinghoff-Scheel and the other on behalf of Obergruppenführer Karl Wolff, supreme commander of the S.S. and police and the German general plenipotentiary of the Wehrmacht in Italy.

After signing the document of unconditional surrender the two German plenipotentiaries returned by a secret route to General Vietinghoff's head-quarters in the High Alps to arrange the surrender of German and Italian land, air, and naval forces.

The territory in General Vietinghoff's Southwest command includes all Northern Italy to the Isonzo river in the Northwest and the Austrian provinces of Vorarlberg, Tirol, and Salzburg, and portions of Carinthia and Styria.

The enemy's total forces, including combat and rear echelon troops, surrendered to the Allies are estimated to number nearly 1,000,000 men. The fighting troops include the remnants of twenty-two German and six Italian Fascist divisions.

The instrument of surrender consists of six short paragraphs. Three appendices giving details pertaining to the land, sea, and air forces were attached to the instrument.

The following terms are imposed:

First, unconditional surrender by the German commander-in-chief, southwest, of all forces under his command or control on land, sea, or air to the Supreme Allied Commander, Mediterranean theatre of operations.

Secondly, the cessation of all hostilities on land, on sea, or in the air by enemy forces at 1200 hours G.M.T., May 2, 1945.

Thirdly, the immediate immobilization and disarmament of enemy ground, sea, and air forces.

Fourthly, an obligation on the part of the German commander in-chief, Southwest, to carry out any further orders issued by the Supreme Allied Command, Mediterranean theatre.

Fifthly, disobedience of orders or failure to comply with them will be dealt with in accordance with the accepted laws and usages of war.

* Communique of Allied Force Headquarters, Mediterranean; The Times, London, May 3, 1945, p. 4.

The instrument of surrender stipulates that it is independent of, without prejudice to, and will be superseded by, any general instrument of surrender imposed by or on behalf of the United Nations and applicable to Germany and the German armed forces as a whole.

The instrument of surrender and appendices is written in English and German. The English version is the authentic text.

The decision of the Supreme Allied Command, Mediterranean theatre, will be final if any doubt or dispute arises as to the meaning or interpretation of the surrender terms.

The signing took place in the office of General Morgan in the presence of British, United States, and U.S.S.R. officers, including Lieutenant-General Robertson, Chief Administrative Officer, Allied Force Headquarters; Major-General Lemnitzer, Deputy Chief of Staff; Rear-Admiral H. A. Packer, Chief of Staff to the Commander-in-Chief, Mediterranean; Rear-Admiral S. S. Lewis, Chief of Staff to the Commander United States Naval Forces in North African Waters; Major-General Chauncey, Chief of Staff to Mediterranean Allied Air Forces; Air Vice-Marshal G. B. A. Baker, Chief of Staff to the Deputy Air Commander-in-Chief; and many other senior allied staff officers.

UNITED STATES—FRANCE—GERMANY—GREAT BRITAIN— SOVIET UNION *

UNCONDITIONAL SURRENDER OF GERMAN FORCES AT RHEIMS †

May 8, 1945

- 1. We, the undersigned, acting by authority of the German High Command, hereby surrender unconditionally to the Supreme Commander, Allied Expeditionary Force, and simultaneously to the Soviet High Command, all forces on land, sea, and in the air who are at this date under German control.
- 2. The German High Command will at once issue orders to all German military, naval, and air authorities and to all forces under German control to cease active operations at 2301 hours [11:01 p.m.] Central European Time on 8 May and to remain in the positions occupied at the time. No ship, vessel or aircraft is to be scuttled, or any damage done to their hull, machinery or equipment.
- 3. The German High Command will at once issue to the appropriate commanders and ensure the carrying out of any further orders issued by the Supreme Commander, Allied Expeditionary Force, and by the Soviet High Command.
 - 4. This Act of Military Surrender is without prejudice to, and will be
- *The United States and Great Britain acted in behalf of all Allied forces; France, Germany, and Russia individually.

† Text in The New York Times, May 9, 1945, p. 3.

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superseded by, any general instrument of surrender imposed by, or on behalf of, the United Nations and applicable to Germany and the German Armed Forces as a whole.

5. In the event of the German High Command or any of the forces under their control failing to act in accordance with this Act of Surrender the Supreme Commander, Allied Expeditionary Force, and the Soviet High Command will take such punitive or other action as they deem appropriate.

Signed at Reims, France, at 0241 hours [2:41 A.M.] on 7 May, 1945.

On behalf of the German High Command—Jodl

In the presence of:

On behalf of the Supreme Commander,
Allied Expeditionary Force—W. B. SMITH.
On behalf of the Soviet High Command—IVAN SUBLOPAROFF.
On behalf of the French—F. SEVEZ.

UNITED STATES—GERMANY—GREAT BRITAIN— SOVIET UNION *

UNCONDITIONAL SURRENDER OF GERMAN FORCES AT BERLIN †

May 9, 1945

- 1. We the undersigned, acting by authority of the German High Command, hereby surrender unconditionally to the Supreme Commander, Allied Expeditionary Force, and simultaneously to the Supreme High Command of the Red Army, all forces on land, at sea, and in the air who are at this date under German control.
- 2. The German High Command will at once issue orders to all German military, naval, and air authorities and to all forces under German control to cease active operations at 23.01 hours, Central European Time, on May 8, 1945, to remain in the positions occupied at that time and to disarm completely, handing over their weapons and equipment to the local Allied commanders or officers designated by representatives of the Allied Supreme Commands. No ship, vessel, or aircraft is to be scuttled, or any damage done to their hulls, machinery, or equipment, nor to machines of all kinds, armament, apparatus, and all the technical means of prosecution of war in general.
- 3. The German High Command will at once issue to the appropriate commanders; and ensure the carrying out of, any further orders issued by the Supreme Commander, Allied Expeditionary Force, and by the Supreme High Command of the Red Army.
- 4. This act of military surrender is without prejudice to, and will be superseded by, any general instrument of surrender imposed by or on behalf of
 - * A French representative signed as a witness.
 - † Text from The Times, London, May 11, 1945, p. 4.

the United Nations and applicable to Germany and the German armed forces as a whole.

- 5. In the event of the German High Command or any of the forces under their control failing to act in accordance with this act of surrender, the Supreme Commander, Allied Expeditionary Force, and the Supreme High Command of the Red Army will take such punitive or other action as they deem appropriate.
- 6. This act is drawn up in the English, Russian, and German languages. The English and Russian are the only authentic texts.

UNITED STATES-FRANCE-GREAT BRITAIN-SOVIET UNION

DECLARATION REGARDING THE DEFEAT OF GERMANY AND THE ASSUMPTION OF SUPREME AUTHORITY WITH RESPECT TO GERMANY AND SUPPLEMENTARY STATEMENTS *

June 5, 1945

The German armed forces on land, at sea and in the air have been completely defeated and have surrendered unconditionally and Germany, which bears responsibility for the war, is no longer capable of resisting the will of the victorious Powers. The unconditional surrender of Germany has thereby been effected, and Germany has become subject to such requirements as may now or hereafter be imposed upon her.

There is no central Government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the victorious Powers.

It is in these circumstances necessary, without prejudice to any subsequent decisions that may be taken respecting Germany, to make provision for the cessation of any further hostilities on the part of the German armed forces, for the maintenance of order in Germany and for the administration of the country, and to announce the immediate requirements with which Germany must comply.

The Representatives of the Supreme Commands of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics and the French Republic, hereinafter called the "Allied Representatives," acting by authority of their respective Governments and in the interests of the United Nations, accordingly make the following Declaration:

The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal, or local government or

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* Department of State Bulletin, Vol. XII, No. 311 (June 10, 1945), p. 1051; texts also by courtesy of British Information Services, Washington (Cmd. 6648).

authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany.

The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory.

In virtue of the supreme authority and powers thus assumed by the four Governments, the Allied Representatives announce the following requirements arising from the complete defeat and unconditional surrender of Germany with which Germany must comply:—

Article 1

Germany, and all German military, naval and air authorities and all forces under German control shall immediately cease hostilities in all theatres of war against the forces of the United Nations on land, at sea and in the air.

Article 2

- (a) All armed forces of Germany or under German control, wherever they may be situated, including land, air, anti-aircraft and naval forces, the S.S., S.A. and Gestapo, and all other forces or auxiliary organisations equipped with weapons, shall be completely disarmed, handing over their weapons and equipment to local Allied Commanders or to officers designated by the Allied Representatives.
- (b) The personnel of the formations and units of all the forces referred to in paragraph (a) above shall, at the discretion of the Commander-in-Chief of the Armed Forces of the Allied States concerned, be declared to be prisoners of war, pending further decisions, and shall be subject to such conditions and directions as may be prescribed by the respective Allied Representatives.
- (c) All forces referred to in paragraph (a) above, wherever they may be, will remain in their present positions pending instructions from the Allied Representatives.
- (d) Evacuation by the said forces of all territories outside the frontiers of Germany as they existed on the 31st December, 1937, will proceed according to instructions to be given by the Allied Representatives.
- (e) Detachments of civil police to be armed with small arms only, for the maintenance of order and for guard duties, will be designated by the Allied Representatives.

Article 3

(a) All aircraft of any kind or nationality in Germany or Germanoccupied or controlled territories or waters, military, naval or civil, other than aircraft in the service of the Allies, will remain on the ground, on the water or aboard ships pending further instructions.

(b) All German-controlled aircraft in or over territories or waters not occupied or controlled by Germany will proceed to Germany or to such other place or places as may be specified by the Allied Representatives.

Article 4

- (a) All German or German-controlled naval vessels, surface and submarine, auxiliary naval craft, and merchant and other shipping, wherever such vessels may be at the time of this Declaration, and all other merchant ships of whatever nationality in German ports, will remain in or proceed immediately to ports and bases as specified by the Allied Representatives. The crews of such vessels will remain on board pending further instructions.
- (b) All ships and vessels of the United Nations, whether or not title has been transferred as the result of prize court or other proceedings, which are at the disposal of Germany or under German control at the time of this Declaration, will proceed at the dates and to the ports or bases specified by the Allied Representatives.

Article 5

- (a) All or any of the following articles in the possession of the German armed forces or under German control or at German disposal will be held intact and in good condition at the disposal of the Allied Representatives, for such purposes and at such times and places as they may prescribe:
 - (i) all arms, ammunition, explosives, military equipment, stores and supplies and other implements of war of all kinds and all other war material;
 - (ii) all naval vessels of all classes, both surface and submarine, auxiliary naval craft and all merchant shipping, whether afloat, under repair or construction, built or building;
 - (iii) all aircraft of all kinds, aviation and anti-aircraft equipment and devices;
 - (iv) all transportation and communications facilities and equipment, by land, water or air;
 - (v) all military installations and establishments, including airfields, seaplane bases, ports and naval bases, storage depots, permanent and temporary land and coast fortifications, fortresses and other fortified areas, together with plans and drawings of all such fortifications, installations and establishments;
 - (vi) all factories, plants, shops, research institutions, laboratories, testing stations, technical data, patents, plans, drawings and inventions, designed or intended to produce or to facilitate the production or use of the articles, materials and facilities referred to in sub-paragraphs (i), (ii), (iii), (iv) and (v) above or otherwise to further the conduct of war.

- (b) At the demand of the Allied Representatives the following will be furnished:
 - (i) the labour, services and plant required for the maintenance or operation of any of the six categories mentioned in paragraph (a) above; and

(ii) any information or records that may be required by the Allied Representatives in connection with the same.

(c) At the demand of the Allied Representatives all facilities will be provided for the movement of Allied troops and agencies, their equipment and supplies, on the railways, roads and other land communications or by sea, river or air. All means of transportation will be maintained in good order and repair, and the labour, services and plant necessary therefor will be furnished.

Article 6

- (a) The German authorities will release to the Allied Representatives, in accordance with the procedure to be laid down by them, all prisoners of war at present in their power, belonging to the forces of the United Nations, and will furnish full lists of these persons, indicating the places of their detention in Germany or territory occupied by Germany. Pending the release of such prisoners of war, the German authorities and people will protect them in their persons and property and provide them with adequate food, clothing, shelter, medical attention and money in accordance with their rank or official position.
- (b) The German authorities and people will in like manner provide for and release all other nationals of the United Nations who are confined, interned or otherwise under restraint, and all other persons who may be confined, interned or otherwise under restraint for political reasons or as a result of any Nazi action, law or regulation which discriminates on the ground of race, colour, creed or political belief.
- (c) The German authorities will, at the demand of the Allied Representatives, hand over control of places of detention to such officers as may be designated for the purpose by the Allied Representatives.

Article 7

The German authorities concerned will furnish to the Allied Representatives:

(a) full information regarding the forces referred to in Article 2(a), and, in particular, will furnish forthwith all information which the Allied Representatives may require concerning the numbers, locations and dispositions of such forces, whether located inside or outside Germany;
(b) complete and detailed information concerning mines, minefields and

other obstacles to movement by land, sea or air, and the safety

lanes in connection therewith. All such safety lanes will be kept open and clearly marked; all mines, minefields and other dangerous obstacles will as far as possible be rendered safe, and all aids to navigation will be reinstated. Unarmed German military and civilian personnel with the necessary equipment will be made available and utilised for the above purposes, and for the removal of mines, minefields and other obstacles as directed by the Allied Representatives.

Article 8

There shall be no destruction, removal, concealment, transfer or scuttling of, or damage to, any military, naval, air, shipping, port, industrial and other like property and facilities and all records and archives, wherever they may be situated, except as may be directed by the Allied Representatives.

Article 9

Pending the institution of control by the Allied Representatives over all means of communication, all radio and telecommunication installations and other forms of wire or wireless communications, whether ashore or afloat, under German control, will cease transmission except as directed by the Allied Representatives.

Article 10

The forces, nationals, ships, aircraft, military equipment, and other property in Germany or in German control or service or at German disposal, of any other country at war with any of the Allies, will be subject to the provisions of this Declaration and of any proclamations, orders, ordinances or instructions issued thereunder.

Article 11

- (a) The principal Nazi leaders as specified by the Allied Representatives, and all persons from time to time named or designated by rank; office or employment by the Allied Representatives as being suspected of having committed, ordered or abetted war crimes or analogous offences, will be apprehended and surrendered to the Allied Representatives.
- (b) The same will apply in the case of any national or any of the United Nations who is alleged to have committed an offense against his national law, and who may at any time be named or designated by rank, office or employment by the Allied Representatives.
- (c) The German authorities and people will comply with any instructions given by the Allied Representatives for the apprehension and surrender of such persons.

Article 12

The Allied Representatives will station forces and civil agencies in any or all parts of Germany as they may determine.

Article 13

- (a) In the exercise of the supreme authority with respect to Germany assumed by the Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, the four Allied Governments will take such steps, including the complete disarmament and demilitarisation of Germany, as they deem requisite for future peace and security.
- (b) The Allied Representatives will impose on Germany additional political, administrative, economic, financial, military and other requirements arising from the complete defeat of Germany. The Allied Representatives or persons or agencies duly designated to act on their authority, will issue proclamations, orders, ordinances and instructions for the purpose of laying down such additional requirements, and of giving effect to the other provisions of this Declaration. All German authorities and the German people shall carry out unconditionally the requirements of the Allied Representatives, and shall fully comply with all such proclamations, orders, ordinances and instructions.

Article 14

This Declaration enters into force and effect at the date and hour set forth below. In the event of failure on the part of the German authorities or people promptly and completely to fulfil their obligations hereby or hereafter imposed, the Allied Representatives will take whatever action may be deemed by them to be appropriate under the circumstances.

Article 15

This Declaration is drawn up in the English, Russian, French and German languages. The English, Russian and French are the only authentic texts.

June 5, 1945, 16.40 hours.

Berlin

Signed by the Allied Representatives:

B. Montgomery, F.M.

DWIGHT D. EISENHOWER.

G. K. ZHUKOV.

F. DE LATTRE DE TASSIGNY.

Statement on zones of occupation in Germany.

Germany, within her frontiers as they were on the 31st December, 1937, will, for the purposes of occupation, be divided into four zones, one to be allotted to each Power as follows:

an eastern zone to the Union of Soviet Socialist Republics;

a north-western zone to the United Kingdom;

a south-western zone to the United States of America;

a western zone to France.

The occupying forces in each zone will be under a Commander-in-Chief designated by the responsible Power. Each of the four Powers may, at its discretion, include, among the forces assigned to occupation duties under the command of its Commander-in-Chief, auxiliary contingents from the forces of any other Allied Power which has actively participated in military operations against Germany.

2. The area of "Greater Berlin" will be occupied by forces of each of the four Powers. An Inter-Allied Governing Authority (in Russian, Komendatura) consisting of four Commandants, appointed by their respective Commanders-in-Chief, will be established to direct jointly its administration.

Statement on control machinery in Germany.

In the period when Germany is carrying out the basic requirements of unconditional surrender, supreme authority in Germany will be exercised, on instructions from their Governments, by the British, United States, Soviet and French Commanders-in-Chief, each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole. The four Commanders-in-Chief will together constitute the Control Council. Each Commander-in-Chief will be assisted by a Political Adviser.

- 2. The Control Council, whose decisions shall be unanimous, will ensure appropriate uniformity of action by the Commanders-in-Chief in their respective zones of occupation and will reach agreed decisions on the chief questions affecting Germany as a whole.
- 3. Under the Control Council, there will be a permanent Co-ordinating Committee composed of one representative of each of the four Commanders-in-Chief, and a Control Staff organised in the following Divisions (which are subject to adjustment in the light of experience): Military; Naval; Air; Transport; Political; Economic; Finance; Reparation, Deliveries and Restitution; Internal Affairs and Communications; Legal; Prisoners of War and Displaced Persons; Man-power.

There will be four heads of each Division, one designated by each Power. The staffs of the Division may include civilian as well as military personnel, and may also in special cases include nationals of other United Nations appointed in a personal capacity.

- 4. The functions of the Co-ordinating Committee and of the Control Staff will be to advise the Control Council, to carry out the Council's decisions and to transmit them to the appropriate German organs, and to supervise and control the day-to-day activities of the latter.
- 5. Liaison with the other United Nations Governments chiefly interested will be established through the appointment by such Governments of military missions (which may include civilian members) to the Control Council. These missions will have access through the appropriate channels to the organs of control.

- 6. United Nations organisations will, if admitted by the Control Council to operate in Germany, be subordinate to the Allied control machinery and answerable to it.
- 7. The administration of the "Greater Berlin" area will be directed by an Inter-Allied Governing Authority, which will operate under the general direction of the Control Council, and will consist of four Commandants, each of whom will serve in rotation as Chief Commandant. They will be assisted by a technical staff which will supervise and control the activities of the local German organs.
- 8. The arrangements outlined above will operate during the period of occupation following German surrender, when Germany is carrying out the basic requirements of unconditional surrender. Arrangements for the subsequent period will be the subject of a separate agreement.

Statement on consultation with Governments of other United Nations.

By the Declaration regarding the defeat of Germany issued at Berlin on the 5th of June, 1945, the Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic have assumed supreme authority with respect to Germany. The Governments of the four Powers hereby announce that it is their intention to consult with the Governments of other United Nations in connection with the exercise of this authority.

June 5, 1945.

UNITED STATES

REPORT TO THE PRESIDENT FROM JUSTICE ROBERT H. JACKSON, CHIEF OF COUNSEL FOR THE UNITED STATES IN THE PROSECUTION OF AXIS WAR CRIMINALS

June 7, 1945

MY DEAR MR. PRESIDENT:

I have the honor to report accomplishments during the month since you named me as Chief of Counsel for the United States in prosecuting the principal Axis War Criminals. In brief, I have selected staffs from the several services, departments and agencies concerned; worked out a plan for preparation, briefing, and trial of the cases; allocated the work among the several agencies; instructed those engaged in collecting or processing evidence; visited the European Theater to expedite the examination of captured documents, and the interrogation of witnesses and prisoners; coordinated our preparation of the main case with preparation by Judge Advocates of many cases not included in my responsibilities; and arranged cooperation and mutual assistance with the United Nations War Crimes Commission and with Counsel appointed to represent the United Kingdom in the joint prosecution.

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The responsibilities you have conferred on me extend only to "the case of major criminals whose offenses have no particular geographical localization and who will be punished by joint decision of the governments of the Allies," as provided in the Moscow Declaration of November 1, 1943, by President Roosevelt, Prime Minister Churchill and Premier Stalin. It does not include localized cases of any kind. Accordingly, in visiting the European Theater, I attempted to establish standards to segregate from our case against the principal offenders, cases against many other offenders and to expedite their trial. These cases fall into three principal classes:

1. The first class comprises offenses against military personnel of the United States—such, for example, as the killing of American airmen who crash-landed, and other Americans who became prisoners of war. In order to insure effective military operation, the field forces from time immemorial have dealt with such offenses on the spot. Authorization of this prompt procedure, however, had been withdrawn because of the fear of stimulating retaliation through execution of captured Americans on trumped-up charges. The surrender of Germany and liberation of our prisoners has ended that danger. The morale and safety of our own troops and effective government of the control area seemed to require prompt resumption of summary dealing with this type of case. Such proceedings are likely to disclose evidence helpful to the case against the major criminals and will not prejudice it in view of the measures I have suggested to preserve evidence and to prevent premature execution of those who are potential defendants or witnesses in the major case.

I flew to Paris and Frankfort and conferred with Generals Eisenhower, Smith, Clay, and Betts, among others, and arranged to have a representative on hand to clear questions of conflict in any particular case. We also arranged an exchange of evidence between my staff and the Theater Judge Advocate's staff. The officials of other countries were most anxious to help. For example, the French brought to General Donovan and me in Paris evidence that civilians in Germany had beaten to death with wrenches three American airmen. They had obtained from the German Burgomeister identification of the killers, had taken them into custody, and offered to deliver them to our forces. Cases such as this are not infrequent. Under the arrangements perfected, the military authorities are enabled to move in cases of this class without delay. Some are already under way; some by now have been tried and verdicts rendered. Some concentration camp cases are also soon to go on trial.

2. A second class of offenders, the prosecution of which will not interfere with the major case, consists of those who, under the Moscow Declaration, are to be sent back to the scene of their crimes for trial by local authorities. These comprise localized offenses or atrocities against persons or property, usually of civilians of countries formerly occupied by Germany. The part

of the United States in these cases consists of the identification of offenders and the surrender on demand of those who are within our control.

The United Nations War Crimes Commission is especially concerned with cases of this kind. It represents many of the United Nations, with the exception of Russia. It has been usefully engaged as a body with which the aggrieved of all the United Nations have recorded their accusations and evidence. Lord Wright, representing Australia, is the Chairman of this Commission, and Lieutenant Colonel Joseph V. Hodgson is the United States representative.

In London, I conferred with Lord Wright and Colonel Hodgson in an effort to coördinate our work with that of the Commission wherever there might be danger of conflict or duplication. There was no difficulty in arriving at an understanding for mutual exchange of information. We undertook to respond to requests for any evidence in our possession against those listed with the Commission as criminals and to coöperate with each of the United Nations in efforts to bring this class of offenders to justice.

Requests for the surrender of persons held by American forces may present diplomatic or political problems which are not my responsibility. But so far as my work is concerned, I advised the Commission, as well as the appropriate American authorities, that there is no objection to the surrender of any person except on grounds that we want him as a defendant or as a witness in the major case.

3. In a third class of cases, each country, of course, is free to prosecute treason charges in its own tribunals and under its own laws against its own traitorous nationals—Quislings, Lavals, "Lord Haw-Haws," and the like.

The consequence of these arrangements is that preparations for the prosecution of major war criminals will not impede or delay prosecution of other offenders. In these latter cases, however, the number of known offenses is likely to exceed greatly the number of prosecutions, because witnesses are rarely able satisfactorily to identify particular soldiers in uniform whose acts they have witnessed. This difficulty of adequately identifying individual perpetrators of atrocities and crimes makes it the more important that we proceed against the top officials and organizations responsible for originating the criminal policies, for only by so doing can there be just retribution for many of the most brutal acts.

II

Over a month ago the United States proposed to the United Kingdom, Soviet Russia and France a specific plan, in writing, that these four powers join in a protocol establishing an International Military Tribunal, defining the jurisdiction and powers of the tribunal, naming the categories of acts declared to be crimes, and describing those individuals and organizations to be placed on trial. Negotiation of such an agreement between the four powers is not yet completed.

In view of the immensity of our task, it did not seem wise to await consummation of international arrangements before proceeding with preparation of the American case. Accordingly, I went to Paris, to American Army Headquarters at Frankfort and Wiesbaden, and to London, for the purpose of assembling, organizing, and instructing personnel from the existing services and agencies and getting the different organizations coördinated and at work on the evidence. I uniformly met with eager coöperation.

The custody and treatment of war criminals and suspects appeared to require immediate attention. I asked the War Department to deny those prisoners who are suspected war criminals the privileges which would appertain to their rank if they were merely prisoners of war; to assemble them at convenient and secure locations for interrogation by our staff; to deny them access to the press; and to hold them in the close confinement ordinarily given suspected criminals. The War Department has been subjected to some criticism from the press for these measures, for which it is fair that I should acknowledge responsibility. The most elementary considerations for insuring a fair trial and for the success of our case suggest the imprudence of permitting these prisoners to be interviewed indiscriminately or to use the facilities of the press to convey information to each other and to criminals Our choice is between treating them as honorable prisoners yet uncaptured. of war with the privileges of their ranks, or to classify them as war criminals, in which case they should be treated as such. I have assurances from the War Department that those likely to be accused as war criminals will be kept in close confinement and stern control.

Since a considerable part of our evidence has been assembled in London, I went there on May 28 with General Donovan to arrange for its examination, and to confer with the United Nations War Crimes Commission and with officials of the British Government responsible for the prosecution of war criminals. We had extended conferences with the newly appointed Attorney General, the Lord Chancellor, the Foreign Secretary, the Treasury Solicitor, and others. On May 29. Prime Minister Churchill announced in the House of Commons that Attorney General Sir David Maxwell Fyfe had been appointed to represent the United Kingdom in the prosecution. lowing this announcement, members of my staff and I held extended conferences with the Attorney General and his staff. The sum of these conferences is that the British are taking steps parallel with our own to clear the military and localized cases for immediate trial, and to effect a complete interchange of evidence and a coordination of planning and preparation of the case by the British and American representatives. Despite the fact that the prosecution of the major war criminals involves problems of no mean dimensions, I am able to report that no substantial differences exist between the United Kingdom representatives and ourselves, and that minor differences have adjusted easily as one or the other of us advanced the better reasons for his view.

The Provisional Government of the French Republic has advised that it

accepts in principle the American proposals for trials before an International Military Tribunal. It is expected to designate its representative shortly. The government of the Union of Soviet Socialist Republics, while not yet committed, has been kept informed of our steps and there is no reason to doubt that it will unite in the prosecution. We propose to make provision for others of the United Nations to become adherents to the agreement.

III

The time, I think, has come when it is appropriate to outline the basic features of the plan of prosecution on which we are tentatively proceeding in preparing the case of the United States:

- 1. The American case is being prepared on the assumption that an inescapable responsibility rests upon this country to conduct an inquiry, preferably in association with others, but alone if necessary, into the culpability of those whom there is probable cause to accuse of atrocities and other crimes. We have many such men in our possession. What shall we do with them? We could, of course, set them at large without a hearing.' But it has cost unmeasured thousands of American lives to beat and bind these men. free them without a trial would mock the dead and make cynics of the living. On the other hand, we could execute or otherwise punish them without a hearing. But undiscriminating executions or punishments without definite findings of guilt, fairly arrived at, would violate pledges repeatedly given, and would not set easily on the American conscience or be remembered by our children with pride. The only other course is to determine the innocence or guilt of the accused after a hearing as dispassionate as the times and the horrors we deal with will permit, and upon a record that will leave our reasons and motives clear.
- 2. These hearings, however, must not be regarded in the same light as a trial under our system, where defense is a matter of constitutional right. Fair hearings for the accused are, of course, required to make sure that we punish only the right men and for the right reasons. But the procedure of these hearings may properly bar obstructive and dilatory tactics resorted to by defendants in our ordinary criminal trials.

Nor should such a defense be recognized as the obsolete doctrine that a head of state is immune from legal liability. There is more than a suspicion that this idea is a relic of the doctrine of the divine right of kings. It is, in any event, inconsistent with the position we take toward our own officials, who are frequently brought to court at the suit of citizens who allege their rights to have been invaded. We do not accept the paradox that legal responsibility should be the least where power is the greatest. We stand on the principle of responsible government declared some three centuries ago to King James by Lord Chief Justice Coke, who proclaimed that even a King is still "under God and the law."

With the doctrine of immunity of a head of state usually is coupled another, that orders from an official superior protect one who obeys them. It will be

noticed that the combination of these two doctrines means that nobody is responsible. Society as modernly organized cannot tolerate so broad an area of official irresponsibility. There is doubtless a sphere in which the defense of obedience to superior orders should prevail. If a conscripted or enlisted soldier is put on a firing squad, he should not be held responsible for the validity of the sentence he carries out. But the case may be greatly altered where one has discretion because of rank or the latitude of his orders. And of course, the defense of superior orders cannot apply in the case of voluntary participation in a criminal or conspiratorial organization, such as the Gestapo or the S.S. An accused should be allowed to show the facts about superior orders. The Tribunal can then determine whether they constitute a defense or merely extenuating circumstances, or perhaps carry no weight at all.

3. Whom will we accuse and put to their defense? We will accuse a large number of individuals and officials who were in authority in the government, in the military establishment, including the General Staff, and in the financial, industrial, and economic life of Germany who by all civilized standards are provable to be common criminals. We also propose to establish the criminal character of several voluntary organizations which have played a cruel and controlling part in subjugating first the German people and then , their neighbors. It is not, of course, suggested that a person should be judged a criminal merely because he voted for certain candidates or maintained political affiliations in the sense that we in America support political The organizations which we will accuse have no resemblance to our political parties. Organizations such as the Gestapo and the S.S. were direct action units, and were recruited from volunteers accepted only because of aptitude for, and fanatical devotion to, their violent purposes.

In examining the accused organizations in the trial, it is our proposal to demonstrate their declared and covert objectives, methods of recruitment, structure, lines of responsibility, and methods of effectuating their programs. In this trial, important representative members will be allowed to defend their organizations as well as themselves. The best practicable notice will be given, that named organizations stand accused and that any member is privileged to appear and join in their defense. If in the main trial an organization is found to be criminal, the second stage will be to identify and try before regular military tribunals individual members not already personally convicted in the principal case. Findings in the main trial that an organization is criminal in nature will be conclusive in any subsequent proceedings against individual members. The individual member will thereafter be allowed to plead only personal defenses or extenuating circumstances, such as that he joined under duress, and as to those defenses he should have the burden of proof. There is nothing novel in the idea that one may lose a part of or all his defense if he fails to assert it in an appointed forum at an earlier In United States war-time legislation, this principle has been utilized and sustained as consistent with our concept of due process of law.

4. Our case against the major defendants is concerned with the Nazi

master plan, not with individual barbarities and perversions which occurred independently of any central plan. The groundwork of our case must be factually authentic and constitute a well-documented history of what we are convinced was a grand, concerted pattern to incite and commit the aggressions and barbarities which have shocked the world. We must not forget that when the Nazi plans were boldly proclaimed they were so extravagant that the world refused to take them seriously. Unless we write the record of this movement with clarity and precision, we cannot blame the future if in days of peace it finds incredible the accusatory generalities uttered during the war. We must establish incredible events by credible evidence.

5. What specifically are the crimes with which these individuals and organizations should be charged, and what marks their conduct as criminal?

There is, of course, real danger that trials of this character will become enmeshed in voluminous particulars of wrongs committed by individual Germans throughout the course of the war, and in the multitude of doctrinal disputes which are part of a lawyer's paraphernalia. We can save ourselves from those pitfalls if our test of what legally is crime gives recognition to those things which fundamentally outraged the conscience of the American people and brought them finally to the conviction that their own liberty and civilization could not persist in the same world with the Nazi power.

Those acts which offended the conscience of our people were criminal by standards generally accepted in all civilized countries, and I believe that we may proceed to punish those responsible in full accord with both our own traditions of fairness and with standards of just conduct which have been internationally accepted. I think also that through these trials we should be able to establish that a process of retribution by law awaits those who in the future similarly attack civilization. Before stating these offenses in legal terms and concepts, let me recall what it was that affronted the sense of justice of our people.

Early in the Nazi regime, people of this country came to look upon the Nazi Government as not constituting a legitimate state pursuing the legitimate objective of a member of the international community. They came to view the Nazis as a band of brigands, set on subverting within Germany every vestige of a rule of law which would entitle an aggregation of people to be looked upon collectively as a member of the family of nations. Our people were outraged by the oppressions, the cruelest forms of torture, the largescale murder, and the wholesale confiscation of property which initiated the Nazi regime within Germany. They witnessed persecution of the greatest enormity on religious, political and racial grounds, the breakdown of trade unions, and the liquidation of all religious and moral influences. not the legitimate activity of a state within its own boundaries, but was preparatory to the launching of an international course of aggression and was with the evil intention, openly expressed by the Nazis, of capturing the form of the German state as an instrumentality for spreading their rule to other

countries. Our people felt that these were the deepest offenses against that International Law described in the Fourth Hague Convention of 1907 as including the "laws of humanity and the dictates of the public conscience."

Once these international brigands, the top leaders of the Nazi party, the S.S. and the Gestapo, had firmly established themselves within Germany by terrorism and crime, they immediately set out on a course of international They bribed, debased, and incited to treason the citizens and subjects of other nations for the purpose of establishing their fifth columns of corruption and sabotage within those nations. They ignored the commonest obligations of one state respecting the internal affairs of another. lightly made and promptly broke international engagements as a part of their settled policy to deceive, corrupt, and overwhelm. They made, and made only to violate, pledges respecting the demilitarized Rhineland, and Czechoslovakia, and Poland, and Russia. They did not hesitate to instigate the Japanese to treacherous attack on the United States. Our people saw in this succession of events the destruction of the minimum elements of trust which can hold the community of nations together in peace and progress. Then, in consummation of their plan, the Nazis swooped down upon the nations they had deceived and ruthlessly conquered them. They flagrantly violated the obligations which states, including their own, have undertaken by convention or tradition as a part of the rules of land warfare, and of the law of the They wantonly destroyed cities like Rotterdam for no military purpose. They wiped out whole populations, as at Lidice, where no military purposes They confiscated property of the Poles and gave it to were to be served. They transported in labor battalions great sectors of the party members. civilian populations of the conquered countries. They refused the ordinary protections of law to the populations which they enslaved. The feeling of outrage grew in this country, and it became more and more felt that these were crimes committed against us and against the whole society of civilized nations by a band of brigands who had seized the instrumentality of a state.

I believe that those instincts of our people were right and that they should guide us as the fundamental tests of criminality. We propose to punish acts which have been regarded as criminal since the time of Cain and have been so written in every civilized code.

In arranging these trials we must also bear in mind the aspirations with which our people have faced the sacrifices of war. After we entered the war, and as we expended our men and our wealth to stamp out these wrongs, it was the universal feeling of our people that out of this war should come unmistakable rules and workable machinery from which any who might contemplate another era of brigandage would know that they would be held personally responsible and would be personally punished. Our people have been waiting for these trials in the spirit of Woodrow Wilson, who hoped to "give to international law the kind of vitality which it can only have if it is a real expression of our moral judgment."

Against this background it may be useful to restate in more technical lawyer's terms the legal charges against the top Nazi leaders and those voluntary associations such as the S.S. and Gestapo which clustered about them and were ever the prime instrumentalities, first, in capturing the German state, and then, in directing the German state to its spoliations against the rest of the world:

- (a) Atrocities and offenses against persons or property constituting violations of International Law, including the laws, rules, and customs of land and naval warfare. The rules of warfare are well established and generally accepted by the nations. They make offenses of such conduct as killing of the wounded, refusal of quarter, ill treatment of prisoners of war, firing on undefended localities, poisoning of wells and streams, pillage and wanton destruction, and ill treatment of inhabitants in occupied territory.
- (b) Atrocities and offenses, including atrocities and persecutions on racial or religious grounds, committed since 1933. This is only to recognize the principles of criminal law as they are generally observed in civilized states. These principles have been assimilated as a part of International Law at least since 1907. The Fourth Hague Convention provided that inhabitants and belligerents shall remain under the protection and the rule of "the principles of the law of nations, as they result from the usage established among civilized peoples, from the laws of humanity and the dictates of the public conscience."
- (c) Invasions of other countries and initiation of wars of aggression in violation of International Law or treaties.

The persons to be reached by these charges will be determined by the rule of liability, common to all legal systems, that all who participate in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offenses committed and responsible for the acts of each other. All are liable who have incited, ordered, procured, or counselled the commission of such acts, or who have taken what the Moscow Declaration describes as "a consenting part" therein.

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The legal position which the United States will maintain, being thus based on the common sense of justice, is relatively simple and non-technical. We must not permit it to be complicated or obscured by sterile legalisms developed in the age of imperialism to make war respectable.

Doubtless what appeals to men of good will and common sense as the crime which comprehends all lesser crimes, is the crime of making unjustifiable war. War necessarily is a calculated series of killings, of destructions of property, of oppressions. Such acts unquestionably would be criminal except that International Law throws a mantle of protection around acts which otherwise would be crimes, when committed in pursuit of legitimate warfare. In this they are distinguished from the same acts in the pursuit

of piracy or brigandage which have been considered punishable wherever and by whomever the guilty are caught. But International Law as taught in the Nineteenth and the early part of the Twentieth Century generally declared that war-making was not illegal and is no crime at law. Summarized by a standard authority, its attitude was that "both parties to every war are regarded as being in an identical legal position, and consequently as being possessed of equal rights." This, however, was a departure from the doctrine taught by Grotius, the father of International Law, that there is a distinction between the just and the unjust war—the war of defense and the war of aggression.

International law is more than a scholarly collection of abstract and immutable principles. It is an outgrowth of treaties or agreements between nations and of accepted customs. But every custom has its origin in some single act, and every agreement has to be initiated by the action of some Unless we are prepared to abandon every principle of growth for International Law, we cannot deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened International Law. International Law is not capable of development by legislation, for there is no continuously sitting international legislature. Innovations and revisions in International Law are brought about by the action of governments designed to meet a change in circumstances. It grows, as did the Common-law, through decisions reached from time to time in adapting settled principles to new situa-Hence I am not disturbed by the lack of precedent for the inquiry we propose to conduct. After the shock to civilization of the last World War, however, a marked reversion to the earlier and sounder doctrines of International Law took place. By the time the Nazis came to power it was thoroughly established that launching an aggressive war or the institution of war by treachery was illegal and that the defense of legitimate warfare was: no longer available to those who engaged in such an enterprise. It is high time that we act on the juridical principle that aggressive war-making is. illegal and criminal.

The reëstablishment of the principle of unjustifiable war is traceable in many steps. One of the most significant is the Briand-Kellogg Pact of 1928, by which Germany, Italy and Japan, in common with ourselves and practically all the nations of the world, renounced war as an instrument of national policy, bound themselves to seek the settlement of disputes only by pacific means, and condemned recourse to war for the solution of international controversies. Unless this Pact altered the legal status of wars of aggression, it has no meaning at all and comes close to being an act of deception. In 1932, Mr. Stimson, as Secretary of State, gave voice to the American concept of its effect. He said, "War between nations was renounced by the signatories of the Briand-Kellogg Treaty: This means that it has become illegal throughout practically the entire world. It is no longer to be

the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing. . . . By that very act, we have made obsolete many legal precedents and have given the legal profession the task of reëxamining many of its codes and treaties."

This Pact constitutes only one in a series of acts which have reversed the viewpoint that all war is legal and have brought International Law into harmony with the common sense of mankind, that unjustifiable war is a crime. Without attempting an exhaustive catalogue, we may mention the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, signed by the representatives of forty-eight governments, which declared that "a war of aggression constitutes . . . an international crime." The Eighth Assembly of the League of Nations in 1927, on unanimous resolution of the representatives of forty-eight member nations, including Germany, declared that a war of aggression constitutes an international crime. At the Sixth Pan-American Conference of 1928, the twenty-one American Republics unanimously adopted a resolution stating that "war of aggression constitutes an international crime against the human species."

The United States is vitally interested in recognizing the principle that treaties renouncing war have juridical as well as political meaning. We relied upon the Briand-Kellogg Pact and made it the cornerstone of our national policy. We neglected our armaments and our war machine in reliance upon it. All violations of it, wherever started, menace our peace as we now have good reason to know. An attack on the foundations of international relations cannot be regarded as anything less than a crime against the international community, which may properly vindicate the integrity of its fundamental compacts by punishing aggressors. We therefore propose to charge that a war of aggression is a crime, and that modern International Law has abolished the defense that those who incite or wage it are engaged in legitimate business. Thus may the forces of the law be mobilized on the side of peace.

Any legal position asserted on behalf of the United States will have considerable significance in the future evolution of International Law. In untroubled times, progress toward an effective rule of law in the international community is slow indeed. Inertia rests more heavily upon the society of nations than upon any other society. Now we stand at one of those rare moments when the thought and institutions and habits of the world have been shaken by the impact of world war on the lives of countless millions. Such occasions rarely come and quickly pass. We are put under a heavy responsibility to see that our behavior during this unsettled period will direct the world's thought toward a firmer enforcement of the laws of international conduct, so as to make war less attractive to those who have governments and the destinies of peoples in their power.

V

I have left until last the first question which you and the American people are asking—when can this trial start and how long will it take. I should be glad to answer if the answer were within my control. But it would be foolhardy to name dates which depend upon the action of other governments and of many agencies. Inability to fix definite dates, however, would not excuse failure to state my attitude toward the time and duration of trial.

I know that the public has a deep sense of urgency about these trials. Because I, too, feel a sense of urgency, I have proceeded with the preparations of the American case before completion of the diplomatic exchanges concerning the Tribunal to hear it and the agreement under which we are to We must, however, recognize the existence of serious difficulties to be overcome in preparation of the case. It is no criticism to say that until the surrender of Germany the primary objective of the military intelligence services was naturally to gather military information rather than to prepare a legal case for trial. We must now sift and compress within a workable scope voluminous evidence relating to a multitude of crimes committed in several countries and participated in by thousands of actors over a decade of The preparation must cover military, naval, diplomatic, political, and commercial aggressions. The evidence is scattered among various agencies and in the hands of several armies. The captured documentary evidence—literally tons of orders, records, and reports—is largely in foreign languages. Every document and the trial itself must be rendered into several languages. An immense amount of work is necessary to bring this evidence together physically, to select what is useful, to integrate it into a case. to overlook no relevant detail, and at the same time and at all costs to avoid becoming lost in a wilderness of single instances. Some sacrifice of perfection to speed can wisely be made and, of course, urgency overrides every personal convenience and comfort for all of us who are engaged in this work.

Beyond this I will not go in prophecy. The task of making this record complete and accurate, while memories are fresh, while witnesses are living, and while a tribunal is available, is too important to the future opinion of the world to be undertaken before the case can be sufficiently prepared to make a creditable presentation. Intelligent, informed, and sober opinion will not be satisfied with less.

The trial must not be protracted in duration by anything that is obstructive or dilatory, but we must see that it is fair and deliberative and not discredited in times to come by any mob spirit. Those who have regard for the good name of the United States as a symbol of justice under law would not have me proceed otherwise.

May I add that your personal encouragement and support have been a

source of strength and inspiration to every member of my staff, as well as to me, as we go forward with a task so immense that it can never be done completely or perfectly, but which we hope to do acceptably.

Respectfully yours,

(s) ROBERT H. JACKSON

UNITED NATIONS

CHARTER OF THE UNITED NATIONS*

June 26, 1945

We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I

Purposes and principles

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

, * Text provided by Department of State; printed in *Congressional Record*, Vol. 91, No. 132 (July 2, 1945), p. 7225.

- 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
- 3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
- 4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

- 1. The Organization is based on the principle of the sovereign equality of all its Members.
- 2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
- 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
- 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
- 5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
- 6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
- 7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

Membership

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Or-

ganization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

- 1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.
- 2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

CHAPTER III

Organs

Article 7

- 1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.
- 2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV

The General Assembly

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

Functions and Powers

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

- 1. The General Assembly may consider the general principles of coöperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.
- 2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.
- 3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
- 4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

- 1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.
- 2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

- 1. The General Assembly shall initiate studies and make recommendations for the purpose of:
- a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;
- b. promoting international coöperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
- 2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

- 1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.
- 2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

- 1. The General Assembly shall consider and approve the budget of the Organization.
- 2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.
- 3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57

and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

Voting

Article 18

- 1. Each member of the General Assembly shall have one vote.
- 2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.
- 3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Procedure Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V

The Security Council

Composition

Article 23

- 1. The Security Council shall consist of eleven Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.
- 2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.
 - 3. Each member of the Security Council shall have one representative.

Functions and Powers

Article 24

- 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
- 2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VIII, VIII, and XII.
- 3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Voting

Article 27

- 1. Each member of the Security Council shall have one vote.
- 2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.
- 3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Procedure

Article 28

- 1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.
- 2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.
- 3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a

party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

CHAPTER VI

Pacific settlement of disputes

Article 33

- 1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
- 2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

- 1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
- 2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
- 3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

- 1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
- 2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
- 3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general

rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

- 1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.
- 2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII

Action with respect to threats to the peace, breaches of the peace, and acts of aggression

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent any aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

- 1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security,
- 2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
- 3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plants for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

- 1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
- 2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.
- 3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
- 4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

- 1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
- 2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the

United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

Regional arrangements

Article 52

- 1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
- 2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
- 3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.
 - 4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

- 1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.
- 2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities

undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX

International economic and social cooperation

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational coöperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

- 1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
- 2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the coördination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the

authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X

The Economic and Social Council

Composition

Article 61

- 1. The Economic and Social Council shall consist of eighteen Members of the United Nations elected by the General Assembly.
- 2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate reëlection.
- 3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.
- Each member of the Economic and Social Council shall have one representative.

Functions and Powers

Article 62

- 1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.
- 2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
- 3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
- 4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

- 1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.
- 2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

- 1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.
- 2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

- 1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.
- 2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.
- 3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

Voting

Article 67

- 1. Each member of the Economic and Social Council shall have one vote.
- 2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

· Procedure

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for repre-

sentatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Article 72

- 1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.
- 2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

CHAPTER XI

Declaration regarding non-self-governing territories

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
 - c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to cooperate with one another, and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may

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require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

CHAPTER XII

International trusteeship system

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following

categories as may be placed thereunder by means of trusteeship agreements:

- a. territories now held under mandate;
- b. territories which may be detached from enemy states as a result of the Second World War; and
- c. territories voluntarily placed under the system by states responsible for their administration.
- 2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

- 1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.
- 2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the

agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

- 1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.
- 2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
- 3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

Article 85

- 1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.
- 2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII

The Trusteeship Council

Composition

- 1. The Trusteeship Council shall consist of the following Members of the United Nations:
 - a. those Members administering trust territories;
- b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
 - c. as many other Members elected for three-year terms by the General

Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each Member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and Powers

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- \d. take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Voting

Article 89

- 1. Each member of the Trusteeship Council shall have one vote.
- 2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Procedure .

Article 90

- 1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
- 2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

The International Court of Justice

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

- 1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.
- 2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

- 1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
- 2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

- 1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.
- 2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV

The Secretariat

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by

the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

- 1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.
- 2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

- 1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.
- 2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.
- 3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI

Miscellaneous provisions

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force

shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105

- 1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.
- 2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.
- 3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII Transitional security arrangements Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII

Amendments

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

- 1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
- 2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.
- 3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX

Ratification and signature

- 1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.
- 2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

- 3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.
- 4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

In faith whereof the representatives of the Governments of the United Nations have signed the present Charter.

Done at the city of San Francisco the twenty-six day of June, one thousand nine hundred and forty-five.

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE*

Article 1

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I

Organization of the Court

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

- 1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.
 - * Text from Department of State; Congressional Record, as cited, p. 7231.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

- 1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.
- 2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.
- 3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

- 1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.
- 2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible. 2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10

- 1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.
- 2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12 shall be taken without any distinction between permanent and non-permanent members of the Security Council.
- 3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

- 1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.
- 2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.
- 3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the

vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

- 1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.
- 2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.
- 3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.
- 4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

- 1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
 - 2. Any doubt on this point shall be settled by the decision of the Court.

- 1. No member of the Court may act as agent, counsel, or advocate in any case.
- 2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.
 - 3. Any doubt on this point shall be settled by the decision of the Court.

- 1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.
 - 2. Formal notification thereof shall be made to the Secretary-General by the Registrar.
 - 3. This notification makes the place vacant.

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21

- 1. The Court shall elect its President and Vice-President for three years; they may be re-elected.
- 2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22

- 1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.
 - 2. The President and the Registrar shall reside at the seat of the Court.

Article 23

- 1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.
- 2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.
- 3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

- 1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.
 - 2. If the President considers that for some special reason one of the mem-

bers of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

- 1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.
- 2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.
 - 3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

- 1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.
- 2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.
- 3. Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

Article 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31

- 1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.
- 2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.
- 3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.
- 4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.
- 5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.
- 6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

- 1. Each member of the Court shall receive an annual salary.
- 2. The President shall receive a special annual allowance.
- 3. The Vice-President shall receive a special allowance for every day on which he acts as President.
- 4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.
- 5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.
- 6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.
- 7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.
- 8. The above salaries, allowances, and compensation shall be free of all taxation.

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

Competence of the Court

Article 34

- 1. Only states may be parties in cases before the Court.
- 2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.
- 3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35

- 1. The Court shall be open to the states parties to the present Statute.
- 2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.
- 3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.

Article 36

- 1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
- 2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
 - a. the interpretation of a treaty;
 - b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;

- d. the nature or extent of the reparation to be made for the breach of an international obligation.
- 3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
- 4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
- 5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptance of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.
- 6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

- 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b. international custom, as evidence of a general practice accepted as law;
 - c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
- 2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

- 2. If the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.
- 3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

- 1. Cases are brought before the Court, as the case may be either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.
- 2. The Registrar shall forthwith communicate the application to all concerned.
- 3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

Article 41

- 1. The Court shall have the power to indicate, if it considers that circumstances so require any provisional measures which ought to be taken to preserve the respective rights of either party.
- 2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

Article 42

- 1. The parties shall be represented by agents.
- 2. They may have the assistance of counsel or advocates before the Court.
- 3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

- 1. The procedure shall consist of two parts: written and oral.
- 2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.
- 3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.
- 4. A certified copy of every document produced by one party shall be communicated to the other party.
- 5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

- 1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.
- 2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47

- 1. Minutes shall be made at each hearing and signed by the Registrar and the President.
 - 2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50

The Court may, at any time, entrust any individual body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52

After the Court has received the proofs and evidence within the time speci-

fied for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53

- 1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.
- 2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54

- 1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.
 - 2. The Court shall withdraw to consider the judgment.
- 3. The deliberations of the Court shall take place in private and remain secret.

Article 55

- 1. All questions shall be decided by a majority of the judges present.
- 2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56

- 1. The judgment shall state the reasons on which it is based.
- 2. It shall contain the names of the judges who have taken part in the decision.

Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

- 1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.
 - 2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a charter as to lay the case open to revision, and declaring the application admissible on this ground.
 - 3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.
- 4. The application for revision must be made at latest within six months of the discovery of the new fact.
- 5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

- 1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.
 - 2. It shall be for the Court to decide upon this request.

Article 63

- 1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.
- 2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV

Advisory opinions

Article 65

- 1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.
- 2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact

statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

- 1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.
- 2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.
- 3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.
- 4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V

Amendment

Article 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

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INTERVENTION: INDIVIDUAL AND COLLECTIVE

By Charles G. Fenwick Of the Board of Editors

Of all the terms in general use in international law none is more challenging than that of "intervention." Scarcely any two writers are to be found who define this term in the same way or who classify the same situations under it. To one writer it is the interference of one state in the affairs of another; to a second writer it is "unwarranted" interference; to a third it is interference in the domestic or internal affairs of the state; to a fourth it is interference in external as well as internal affairs. Some writers include interference of a third state between two belligerents in time of war, by taking sides with one against the other; others include only interference between the parties to a civil war. Some include "diplomatic intervention," where the intervening state interferes in behalf of its citizens in cases of alleged denial of justice by the other state; others regard such interference merely as "interposition," since it does not involve an attempt to control the

¹ Bonfils, in the edition of his work which was published on the eve of the first World War, observed that there were "few subjects which have given rise to more controversies than that of the duty of non-intervention or the alleged right of intervention. All jurists are agreed upon the seriousness of the act and of its consequences. But in their estimates of the juridical issue one can find only trouble and confusion": Manuel de Droit International Public, 1912 (6th ed.), by Fauchille. Lawrence, in the seventh edition of his Principles of International Law, published in 1910, observed: "There are few questions in the whole range of International Law more difficult than those connected with the legality of intervention, and few have been treated in a more unsatisfactory manner. An appeal to the practice of states is useless; for not only have different states acted on different principles, but the action of the same state at one time has been irreconcilable with its action at another. On this subject history speaks with a medley of discordant voices, and the facts of international intercourse give no clue to the rules of International Law."

² Fauchille, *Droit International Public*, Vol. I, Pt. 1, Nos. 300 and ff., surveys the divergent views of a number of writers. C. C. Hyde gives to the term "a somewhat narrow and technical signification," restricting it to "the interference by a State in the domestic or foreign affairs of another in opposition to its will and serving by design or implication to impair its political independence": *International Law, Chiefty as Interpreted and Applied by the United States*, 1945 (second revised edition), Vol. I, p. 246. But compare his position in note 3, below.

⁴ Hyde, Vol. I, p. 278, regards the transfer by the United States of destroyers to Great Britain in 1940 as "participatory action" which must "in legal contemplation be regarded as constituting an instance of intervention."

In respect to civil war W. E. Hall, *International Law*, 19—(7th ed., by Higgins), § 94, argued forcibly that aid to either party constitutes intervention. T. J. Lawrence, *International Law*, wrote to the same effect. Hyde also takes the same position, p. 253. Others maintain that aid given to a *de jure* government at its own request would not be intervention.

character of the foreign government but merely to influence its conduct. Many jurists regard all intervention as illegal; an American jurist constructs an entire volume on international law around the central theme of the right of intervention.

That writers should hold divergent views both as to the character of intervention and as to the variety of situations that may properly be classified as applications of it is not difficult to understand. For intervention as it has been resorted to in the past, has involved a conflict of two fundamental principles of international law, and while jurists have been attempting to reconcile the conflict between the right of self-defense possessed by one state with the right of independence belonging to another, governments have gone ahead and done what they thought they had a right to do without finding any great difficulty in formulating a legal justification for their conduct. Thus a conflict of views has arisen not only in the field of theory, but between the jurists of one country and those of another, depending upon the foreign policies of their respective governments.)

The irreconcilable conflict between the two fundamental rights of self-defense and of independence has, of course, been due to inherent defects in the international system, quite aside from the tendency of stronger states to use their power-to-attain unjustifiable ends. In the absence of an international court of justice of obligatory jurisdiction each government was left to interpret for itself the application of general principles to concrete situations; in the absence of an international executive authority each state was permitted, when the circumstances appeared to warrant it, to take the law into its own-hands and seek a remedy by armed force if it had such force at its disposal; in the absence of an international legislative body rights and duties had a tendency to become static, so that international law lacked the

- ⁴ Hyde, p. 246, quotes the Clark Memorandum on the Right to Protect Citizens in Foreign Countries by Landing Forces as indicating the distinction between intervention and "interposition," but few others would accept the distinction as it is there made. Nor would the distinction made by Mr. Hughes at Havana in 1928 be acceptable, although it would be difficult to contest the logic of his argument: same, p. 251.
- ⁸ Pradic Podéré among the older French writers was perhaps the most positive in his condemnation, regarding "independence" as an absolute right, not to be contradicted by another right: Traité de Droit International, Vol. I, p. 547. Fiore's condemnation is equally absolute: International Law Codified (Borchard's trans.), Title XVIII; but see below, note 49, where Fiore advocates "collective intervention." Among modern writers see the Argentine jurist, Antokoletz, Tratado de Derecho Internacional Público, Vol. I, p. 414, Podestá-Costa, Manual de Derecho Internacional Público, pp. 47–50, and the Brazilian jurist, Accioly, Traité de Droit International, Vol. I, pp. 277 and ff. But many writers, e.g. Podestá-Costa, while condemning intervention in principle, admit the justification of it in certain extreme cases.
- ⁶ E. C. Stowell, *International Law*, 1931: "Intervention as thus employed in the relations between states may be broadly defined as the rightful use of force or the reliance thereon to constrain obedience to international law."
- 'For the United States the documentary material available for the earlier period in J. B. Moore's Digest is now brought down to date in G. Hackworth's Digest, 1940-1944.

detailed rules necessary to provide solutions for concrete situations and could not adapt itself to changed conditions. (What surprises us to-day is that practically none of the jurists of the nineteenth and early twentieth centuries, when the practice of intervention was so frequent, were prepared to suggest that what was needed for the solution of the controversies to which intervention gave rise was a more adequate organization of the international community.) Whether the organization of the United Nations now being planned will bring the solution is the problem before us.

In a world in which each state was believed to be justified in taking the law into its own hands subject only to "a decent respect for the opinion of mankind," a state, finding it impossible to bring the offending state to terms, had a choice of extreme or more moderate measures.) (It could declare war) and after defeating the opposing party it could impose conditions of peace which removed the cause of offense.3 (But war was a drastic remedy) and if redress could be obtained by merely overturning a particular government or subjecting an existing government to certain fixed controls, then the less' drastic remedy was in order.9 Intervention was thus an application of the fundamental right of self-defense. If the opposing state happened to be a C. H. strong state, the intervention took the form of war; if it happened to be a weaker state the intervention might take the form of interfering in its domestic affairs and dictating policies in accord with the alleged rights of the intervening state. It is this second form of coercion that later came to monopolize the term "intervention." and it was obviously a method that could only be resorted to by a state or group of states so much more powerful than the offending state that the latter would naturally prefer to acquiesce in the act rather than meet force with force

Obviously the state against which intervention was directed was not prepared to admit the legality of the act, having already refused to give redress in answer to diplomatic negotiations. It could be expected to insist that the alleged act of self-defense of the intervening state was a violation of its own right of independence, more sacred than the particular national interests which the intervening state put forward as grounds of self-defense. Here was a conflict of principles for which international law appeared to have no solution. The intervening state alleged wrongful conduct on the part of the state whose independence it sought to restrict; the latter denied the charge. To submit the dispute to arbitration would have been unacceptable to either party.10 The intervening state would have found it difficult to cite any rule

 8 The opinion of jurists is practically unanimous that to justify intervention there must be fsome wrongful conduct on the part of the state which is the object of intervention.

A number of the older jurists who condemn intervention in absolute terms do not distinguish between intervention accompanied by war and intervention effected by the use of armed force without resort to war. War was entered upon more lightly in those days.

10 The Hague Convention Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts forms an exception, prevision being made that the agreement should not be applicable in case the debtor state refused to arbitrate the case or failed to

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beyond the broad right of self-defense while the victim of intervention would in many cases not have been willing to let the question of its independence be brought before an alien tribunal. The conflict of legal principles was naturally made more difficult of solution by the fact that stronger states frequently used their power beyond any reasonable necessity of the situation. This led in its turn to an assertion on the part of weaker states that under no circumstances was intervention justifiable. It remained for the American-States in the decade of the nineteen thirties to raise the doctrine of "hon-intervention" to an absolute principle. Is this to be the law of the future, or is a new rule of law to be established by which the intervention of the individual state will give way to the collective intervention of the international community?

The practice of intervention is as old as history; 11 but it is with the outbreak of the French Revolution that the conflict of the two principles of selfdefense and of independence begins to take shape. To the conservatives of 1791 the radical theories and still more radical acts of the French Revolution appeared to have shaken the very foundations of Christian civilization. The Emperor of Austria declared that it was necessary "to save all Europe from revolt and anarchy." The King of Prussia saw an equal danger, and the allied armies of Austria and Prussia invaded France. Here was intervention, and intervention on the clearest grounds of self-defense, if one considers the national interests of the intervening powers.¹² What rule of law was there to which they could have appealed against the danger lest the Reign of Terror extend to their own lands? What international court could have given them redress? On their side the Revolutionists, having defeated the invading armies, retaliated with an even more drastic form of intervention of their own... Decrees of the National Convention announced that France was ready to come to the aid of all peoples who might wish to recover their liberties, and that should a particular people refuse the liberty offered it and retain or recall its prince or its privileged classes it would itself be treated as an enemy. Here was a declaration of war against the conservative world, paralleling Russian communism at its most extreme stage. Conservatives of the time might well find their original fears of the Revolution justified; and conservatives of to-day might well agree with them.

Could equal justification be found for the intervention of the Triple Alliance when, undertaking to speak in the name of the larger Holy Alliance, it

carry out the award. It is of interest that when the question of non-intervention came up before the Buenos Aires Conference for the Maintenance of Peace in 1936 the Argentine delegation was unwilling to accept the condition attached to the Hague Convention. See Accioly, Traité de Droit International, Vol. I, p. 293.

¹¹ See, for example, the numerous illustrations given by Grotius, *De jure belli ac pacis* (trans. by Kelsey et al.) Book II, Chaps. I, XX; and by Vattel, *Droit des Gens* (trans. by Fenwick), Book II, Chapter IV.

¹² One has only to read Edmund Burke's Reflections on the French Revolution to realize that the fear of the radical principles of the Revolution was not confined to absolute monarchs and their entourage.

declared in the famous Protocol of Troppau of 1820 that states which had undergone a change of government due to revolution, "the results of which threaten other states," would be excluded from the Alliance until their situation gave "guarantees for legal order and stability"? The Protocol itself was only a threat of intervention, but the threat was soon followed by actual intervention to suppress revolutionary movements in Spain and Naples. From the point of view of the three absolute monarchies, having the example of France before them, the fanatical doctrines of the revolutionists were a contagious pest that might readily spread to their own people. From the point of view of liberals in Great Britain and the United States, despotism was seeking to throttle democracy. International law was no more competent then to solve the conflict of principles than it was in 1791.

The United States and Great Britain would doubtless have remained indifferent to the interventions in Naples and in Spain had it not been for the
fear that the Triple Alliance might aid Spain in a war to reconquer her rebellious colonies. Here the threatened intervention, acceptable to Spain,
was met with determined counter-intervention by the United States, President Monroe declaring in his famous message that any "interposition" by
European powers for the purpose of oppressing or controlling in any way the
destiny of the new governments that had declared their independence would
be regarded as the "manifestation of an unfriendly disposition towards the
United States." Again, the conflict of fundamental principles was beyond
the reach of international law of the day. For the principle of self-determination was in its infancy, and on the part of the United States it was a
new extension of self-defense that a state should claim the right to bar another state from the opportunity of recovering its own colonies."

For the next fifty years intervention in one form or another was the order of the day.¹⁵ International law was developing too slowly to meet the new

¹³ The military intervention of the Allied Powers in Russia in 1918 has frequently been referred to as a modern parallel to the threatened intervention of the Triple Alliance which brought forth the Monroe Doctrine. But in fact the two cases have nothing in common, the element of self-defense being so remote in the case of the Triple Alliance as to be non-existent. Doubtless if the intervention of the Allied Powers in 1918 had gone no further than to prevent military supplies from falling into the hands of Germany and to protect the isolated Czecho-Slovak forces, the intervention would have been less open to criticism. See Hyde, Vol. I, pp. 264–270.

¹⁴ It is common with European and Latin American jurists to discuss the Monroe Doctrine under the head of, or in connection with, the principle of non-intervention. English and American writers are more apt to classify the Doctrine under the head of the right of self-defense, approaching it rather from the point of view of the intervening state than from the point of view of the state that is the object of intervention. Contrast in this respect Lawrence, Principles of International Law and Bonfils, Manuel de Droit International.

b Walker's comment in 1893 reads curiously to-day: "The face of Europe has strangely changed since the Congress of Verona; and with the change the forces of intervening Powers have had no little to do. The world has had its fill of intervention, and is yet unsatisfied": The Science of International Law, p. 151.

conditions presented by the revolutionary forces of liberalism that were seeking to substitute constitutional government for absolutism and to free dependent states from the rule of suzerain empires. What rule of law was there to protect the Greeks in their struggle for independence and to stay the hand of the Turk in suppressing the rebellion by massacres that shocked the conscience of Europe? Intervention "in the interest of humanity" was not a new idea; and when Great Britain, France, and Russia took joint action against Turkey in 1827 the rest of the international community looked on with approval. The intervention could scarcely be said to have been collective in character in its initial stage but it soon became so by the implied ratification of other states. Political motives may have influenced the intervening powers but they could be overlooked under the circumstances. The violation of the independence of Turkey was more technical than real.

But if the intervention in behalf of Greece lost any character of arbitrariness in the circumstances under which it took place, other applications of the principle of humanitarian intervention were not so clear, and the writings of jurists of the late nineteenth century reflect the conflict between the response to the appeal of oppressed peoples and the maintenance of the principle of the independence of states which was becoming more and more sacred as the years went by. The difficulty was that alleged humanitarian motives were in most cases influenced or affected by the political interests of the intervening state or states, as when the Concert of Europe intervened in 1878 between Turkey and the Balkan States. ¹⁷ Rut apart from these cases in which the interplay of principles of international law and of the political interests of the intervening states confused the issue, there were other situations in which the principle itself was not clear.

Intervention was said to be justifiable only when the state which was the object of intervention was guilty of wrongful conduct against the intervening state. But could it be said that the oppression by a state of its own citizens, even the massacre of Armenians by the Turk, were legal wrongs towards other states, and not merely moral outrages against which the only remedy was public protest? ¹⁸ Again, international law had no answer, or rather the answer was not so clear as to justify the individual state in intervening and putting an end by force to what appeared to be primarily a domestic situation. Unhappily the rivalries of the Great Powers during the closing decades of the nineteenth century made it seem impracticable to call a general international conference to assert the authority of the whole community of nations. Jurists looked on with concern, having no doubt that somewhere the right existed to put an end to the massacres in Armenia and in Crete but

¹⁶ Calvo, the distinguished Chilean publicist, writing in 1870, observed: "The intervention... was fully justified from the point of view of the principles of international law: its motives were lawful, and the outcome not less so." Droit International, § 103.

¹⁷ See Phillips, The Confederacy of Europe, for details of the numerous political-humanitarian interventions.

¹⁸ See Moore, Digest, Vol. V, § 874.

unable to fix the responsibility of intervention upon a particular state or states.19

The intervention by the United States between Spain and its rebellious colony, Cuba, in 1898, came as the climax to a long series of negotiations and protests.20 Collective intervention was out of the question not merely because the wrongs which led to the intervention affected the United States more directly than other nations but because the traditions of the Monroe Doctrine would have made the United States unwilling to cooperate with other states even if the circumstances had made their cooperation feasible.21 The "cause of humanity" was put first on the list of the grounds of intervention, then protection to citizens, then protection to the trade and commerce of the United States and to property rights, and lastly the constant menace to the peace of the United States from the lawless conditions prevailing on the island.22 The abatement of an international nuisance is the phrase most frequently used in connection with the situation. So convincing does the case against Spain appear at the present day that it is difficult to understand the critical attitude of a number of European writers who not only repudiated the right of the United States to intervene but saw in the act the violation of the express pledge of President Monroe not to interfere with the existing colonies or dependencies of any European power.23

With the turn of the twentieth century intervention entered upon a new phase of its history. Henceforth the role of the United States was to be no longer that of leader of the American States in opposing the intervention of Europe in American affairs but was to be itself the intervening power with the other American States ranged against it. The transition from one role to the other came about quite simply in so far as the attitude of public opinion in the United States was concerned. It was merely a case of assuming the duties that logically followed from resistance to European intervention. The treaty with Cuba of 1903 had provided that the United States might exercise the right to intervene for the preservation of Cuban independence, for the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations of the United States under the treaty with Spain. After the chaotic condi-

¹⁹ Intervention "in the interest of humanity" figured in all of the treatises. Resolutions of sympathy were adopted by national legislatures; but the sense of public responsibility in the different countries did not reach the point of demanding that governments risk individual action. Stowell, *Intervention in International Law*, pp. 51 and ff., and notes indicating the reaction of public opinion.

²⁰ The documents appear at length in Moore, Digest, Vol. VI, §§ 906-910.

¹¹ Mediation, as distinct from collective intervention, was, however, on more than one occasion attempted. For a survey of the diplomatic negotiations immediately preceding the conflict, see Rippy, *Latin America in World Politics*, Chap. X, "The European Powers and the Spanish-American War."

See special message of President McKinley, April 11, 1898: U. S. Foreign Relations, 1898, p. 750.
 See Perkins, Hands Off, Chap. VI.

tions that had existed for so many years these seemed to the United States only reasonable conditions upon which to evacuate the Island and turn control of it over to its people. Surely if Cuba could accept these terms other American States could consider them as within the general principle of self-defense upon which the intervention was undertaken. Perhaps they would have done so if other things had not happened at the same time.

Within less than six months of the treaty with Cuba the United States intervened to prevent Colombia from suppressing the revolution in Panama. The grounds alleged by President Roose left were the rights of the United States under the treaty of 1846, the national interests and safety, and the interests of "collective civilization." 26 The question of treaty rights was doubtless one that might have been passed upon by an international court of arbitration, with the almost certain result of subordinating the claim of the United States in respect to free transit to the obligation of the United States to respect the sovereignty of Colombia. The other grounds obviously could not be satisfied by appeal to the existing rules of international Had the international community a right of eminent domain over the strip of land that was essential to the construction of an international canal? If it had, the right was one to be asserted by the community as a whole and not by the United States alone. The mere assertion by the United States that it was acting in the interests of collective civilization did not constitute a delegation of power from the international community.27

President Roosevelt was now conscious of his powers as well as of his responsibilities. The lesson of the effort of Great Britain, Germany, and Italy to use armed force to collect their debts from Venezuela in 1902 was not lost upon him; and the lesson was apparently made more emphatic by the unfortunate decision of the Hague Permanent Court of Arbitration in the Preferential Claims Case, which appeared to favor the most insistent claimants.²⁸ The Dominican Republic could not pay its debts. What else was there to do, as the President saw it, except for the United States

²⁴ Hyde, Vol. I, p. 56, quotes statements of Secretary Root and General Wood justifying the obligation of protection assumed towards Cuba.

²⁵ The distinguished Cuban jurist Bustamante considers it a mistake to describe as "intervention" the circumstances which led to the recognition of the independence of Cuba: *Droit International Public*, Vol. I, p. 329. The Peruvian jurist Ulloa regards Cuba as having been a "practical protectorate" down to the time of the treaty of 1934: *Derecho Internacional Publico*, 19— (2nd ed.), p. 165.

⁹⁵ Moore, Digest, Vol. III, p. 71; U. S. Foreign Relations, 1903, p. 273.

In The literature on the subject of the intervention is voluminous. S. F. Bemis, The Latin American Policy of the United States, p. 410, describes Dwight C. Miner's Fight for the Panama Route as "the most recent and authoritative monograph." Bemis himself describes the intervention as "the one really black mark in the Latin American Policy of the United States," a mark, however, which "has been rubbed off, after much grief, by the reparations treaty of 1921" (p. 151).

²⁸ For the text of the decision, see M. O. Hudson, Cases on International Law, p. 1359 and Fenwick, Cases, p. 663.

to act as a receiver and take over the financial administration of the country? "Chronic wrongdoing," said the President in his message of December 6, 1904, "or an impotence which results in a general loosening of the oties of civilized society" may in America as elsewhere require intervention, and in the Western Hemisphere, under the Monroe Doctrine, the United States may be forced in flagrant cases "to the exercise of an international police power." ²⁹ The reference to the Monroe Doctrine, otherwise inapplicable to the case, suggested that the President was seeking to justify the intervention partly on the ground of preventing European states from intervening. Two months later the President, in presenting to the Senate the Protocol negotiated with the Dominican Republic, pointed out that it would be difficult to prevent the creditors from resorting to forcible methods of collection "unless there is interference on the part of the United States." ²⁰

What rules of international law were there that might have been applied to the situation? What precedents could be cited to justify the intervention? Taken strictly on its merits the intervention eliminated the necessity of a second encounter by the United States with European creditors and saved the Dominican Republic from bankruptcy. It was rather the announcement of the new principle of the exercise by the United States of "an international police power" that challenged attention. Assuming that a police power had to be exercised in the Western Hemisphere, was this not rather the function of the whole community of American States than that of the United States acting upon its own initiative? Action by an individual state is apt to be arbitrary when there are no clear principles of law to guide it; in any case other states may well feel justified in thinking so. Strangely enough, little criticism appears to have been forthcoming. 11

With the advent of President Wilson to office on March 4, 1913, intervention by the United States took on a new and more idealistic form. Hitherto when a revolutionary group succeeded in overthrowing an established government it was the customary practice to recognize the new government once it had demonstrated its de facto character and manifested its intention to abide by the rules of international law. But was it consistent with international morality that the United States should recognize a new government which, in violation of the constitution of the country and in defiance of the consent of the people, might present itself as the responsible

²⁹ Moore, Digest, Vol. VI, p. 596.
²⁰ U. S. Foreign Relations, 1905, pp. 334-335.

¹¹ Bemis, p. 158: "This Dominican receivership does not appear to have awakened contemporaneously any appreciable resentment or distrust of other governments, even of the Latin American republics, although the press of France and Germany was caustic." The story is well told in Perkins, Chap. VII (at p. 246): "In no one of the great states of Latin America was any official notice taken of the President's theory; in Brazil, in Chile, in Uruguay, and in Peru, the general tone of comment was favorable."

²² Hyde, Vol. I, pp. 161 and ff., summarizes the record.

representative of the state? The unhappy circumstance of the death of the former President when being taken under arrest appeared only to emphasize the moral obligation of refusing to deal with the new President. Doubtless Wilson's intervention in Mexico would have met with less opposition if it had not been attended by the occupation of Vera Cruz and by the pursuit into Mexico of Villa and his bandits. On the other hand, Wilson's acceptance of the mediation of the ABC powers undoubtedly modified the earlier arbitrary character of the intervention.38 But the objection was more deep-For it meant that the state refusing recognition, under circumstances where recognition was almost essential to the survival of the new government, must sooner or later determine the conditions upon which recognition would be granted; and this would carry the interference much further than the original moral purpose might have contemplated.) Only the community of states as a whole had the right to make new conditions of recognition and only the community could properly determine how far it was feasible to go in setting up a common standard of democratic government as one of the conditions.

Intervention now succeeded intervention and the United States found itself becoming more and more deeply involved in the domestic affairs of the Caribbean States. The intervention in Mexico took on new forms as President Carranza succeeded Huerta and President Obregon Carranza. Haiti was occupied in 1915 and a treaty involving in effect a protectorate imposed upon it. The Dominican Republic was occupied in 1916 in consequence of its alleged failure to carry out the provisions of an earlier treaty of 1907. Intervention took place in Nicaragua in 1926–1927, and the armed forces of the United States remained in occupation while elections were being held under their supervision. All these were arbitrary acts on the part of the United States undertaken upon various grounds of national safety, protection of the lives and property of citizens, and observance of treaty obligations. Their happy outcome could not have been foreseen at the time, and it was to be expected that the other American States should take alarm and wonder what was to be the end of it all.

It was at the Conference at Havana in 1928 that the opposition to the intervention policy of the United States first manifested itself in positive form.) The Commission of Jurists, meeting at Rio de Janeiro in 1927, had included as an article of one of its draft projects submitted to the Conference the principle that "No nation has a right to interfere in the internal or foreign affairs of an American Republic against the will of that Republic."

³³ See Bemis, Chap. X, "Woodrow Wilson and Mexico," where Wilson's moral approach to the situation is clearly brought out.

²⁴ Hyde, Vol. I, p. 75; Hackworth, Digest, Vol. I, p. 152, Vol. II, p. 329, and Vol. V, p. 446.

²⁵ Hyde, Vol. I, p. 70; Hackworth, Digest, Vol. I, pp. 154 and ff.

^{*} Hyde, Vol. I, p. 80. A good summary of the intervention is given in T. C. Jones, The Caribbean since 1900, Chap. XVI.

The United States opposed the project and it was withdrawn.³⁷ Later, when one of the delegations introduced a resolution limited to intervention in the internal affairs of another state, the United States again objected. Mr. Hughes, the head of the American delegation, insisted that it was the right of a state under international law to protect its citizens when the local government has lost control of the situation. He preferred to call such intervention "interposition of a temporary character," and insisted that it was not technically "intervention." Nations had duties as well as rights, and one of their duties was that of maintaining a government adequate to the protection of life and property.³⁸

Five years later the principle which had been rejected at Havana was accepted in qualified form at Montevideo, at the Sixth International Conference of American States. Between the two conferences there had been the signature of the Pact of Paris, with its renunciation of war as an instrument of national policy and by inference its condemnation of forcible intervention, and there had been the signature by six American States of the Anti-War Treaty of Non-Aggression and Conciliation which specifically announced that the contracting parties, in the event of their failure to maintain peace between two states in controversy would adopt a common and solidary policy of neutrality but would "in no case resort to intervention, diplomatic or armed." With these agreements as a background the Montevideo Conference adopted the Convention on the Rights and Duties of States, Article 8 of which read: "No state has the right to intervene in the internal or external affairs of another."

This was, indeed, a far-reaching pledge, for it involved not only internal affairs but external as well, and external affairs might well be interpreted to include, however unlikely the fact might be, an agreement by an American State with a European State that might be in violation of the Monroe Doctrine. The elaborate reservation entered by the United States was directed not towards the Article on intervention in particular, but towards the convention as a whole. Secretary Hull insisted that the United States was "as much opposed as any other government to interference with the freedom, the sovereignty, or other internal affairs or processes of the governments of other nations," and that "under our support of the general principle of non-intervention" no government need fear the intervention of the United States under the Roosevelt Administration. Unfortunately, he added, there had not been time to work out the "interpretations and definitions" of the fundamental terms used in the convention, so as to avoid

³⁷ See Bemis, Chap. XIV: "The Rio Commission of Jurists and the Havana Pan American Conference," giving a detailed story of the situation.

^{*} Same, p. 252; Hyde, Vol. I, p. 251.

³⁹ For the text of the Anti-War Treaty, see International Conferences of American States, 1933–1940, p. 496. For comment on the Treaty, see Bemis, Chap. XV: "The Good Neighbor at Montevideo."

⁴⁰ International Conferences, 1933–1940, p. 121.

differences of opinion as to their meaning. In the meantime the other American governments could be assured that the United States would abide by the policies proclaimed and followed since March 4 and by "the law of nations as generally recognized and accepted." 41

If there was any doubt left in the minds of other American Governments that the United States had abandoned its intervention policy of the first three decades of the century, more definite assurance was now to be given. Even before the Montevideo Conference the army of occupation had been withdrawn from Nicaragua (on January 2, 1933); in 1934 the troops were withdrawn from Haiti. In 1934 the Dominican Republic was relieved of certain obligations of the earlier treaty of 1924; and in 1934 Cuba was freed, if that word can be used, from the restrictions imposed by the Platt Amend-These were facts, and they spoke for themselves. Then, at the Conference for the Maintenance of Peace, held at Buenos Aires in 1936, an absolute agreement of non-intervention was entered into. (By Article 1 of the Additional Protocol Relative to Non-Intervention, the contracting parties declared "inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the external or internal affairs of any other of the Parties." 42 This was going as far as even the most extreme non-interventionist could have asked, although there was still lacking a definition of intervention so as to distinguish it from lesser forms of interference such as "diplomatic intervention" in behalf of citizens who might be the victims of a denial of justice and intervention in pursuance of the terms of a special treaty.43)

One of the important factors, if not the most important factor in bringing about the change of policy on the part of the United States was doubtless the adoption, at the same Buenos Aires Conference, of the provisions for general "consultation." The Convention for the Maintenance, Preservation, and Reëstablishment of Peace provided that "in the event that the peace of the American Republics is menaced" the American governments might "consult together for the purpose of finding and adopting methods of peaceful coöperation." This clearly meant that if the United States were presented with a situation similar to that which both Secretary Hughes and Secretary Hull believed to be controlled by the "law of nations," the

⁴ Same, p. 123.

^a Same, p. 191. Condemnation of intervention, although in less extreme form, appears again in the Declaration of American Principles, adopted at the Eighth International Conference of American States, held at Lima in 1938: "The intervention of any state in the internal or external affairs of another is inadmissible." The Preamble of the Act of Chapultepec, repeating the principle of non-intervention with a reference to the Montevideo and Buenos Aires agreements, speaks of the principle as incorporated into the international law of the American States.

⁴² Perhaps it is just as well, in the present state of international law, not to attempt too precise a definition of terms such as "intervention," but to let them stand as general principles, to be interpreted by the agencies of the community as new circumstances present themselves.

⁴⁴ International Conferences, 1933-1940, p. 188.

procedure of consultation was available as a means of finding a solution for the threat to the peace. The Protocol of Non-Intervention itself provided that a violation of the provisions of Article 1 should give rise to mutual consultation; but this appears to have been inserted in favor of the state which might be the object of intervention rather than in favor of the state seeking by intervention to protect its national safety. The possibility of using the procedure of consultation as a means of meeting a situation that might put a strain upon the renouncement of intervention is suggested more clearly by the Declaration of Principles of Inter-American Solidarity and Coöperation, signed shortly before the two treaty agreements. The Declaration announced the principle that "every act susceptible of disturbing the peace of America affects each and every one of them [the American States], and justifies the initiation of the procedure of consultation." This is followed by an enumeration of principles "accepted by the American community of nations," including a condemnation of intervention.

While these events were taking place within the inter-American community an acute crisis was developing in Europe which might well serve to show that conditions might arise which could not be finally settled by a purely negative policy. Civil war broke out in Spain in 1936 and it was soon clear that the issues were not to be confined within the country itself. Germany and Italy saw the opportunity to win the support of a fascist Spanish government if they gave aid to General Franco in his revolt. Russia in turn intervened and gave corresponding aid to the Loyalist cause. 47 France and Great Britain, fearing the spread of the conflict, enacted embargo measures against both sides and proposed a general policy of non-interven-The United States applied the embargoes of its existing neutrality legislation but refused to participate in the cooperative measures proposed. The Council of the League of Nations adopted a resolution affirming the obligation of states to refrain from intervening in the internal affairs of another state. In September, 1936, a Non-Intervention Committee was I set up in London, but its resolutions were secretly violated and its practical measures were too late to be effective. In the end the efforts of the leading non-interventionists had succeeded in avoiding immediate war between the powers representing the rival systems but the authority of international law had been successfully challenged and the lack of unity in the community of nations was more apparent than ever. 48

⁴⁵ The protocol also provides that any question concerning its interpretation should be submitted to conciliation, arbitration or judicial settlement; but this must be understood as governing relations between the parties to the controversy.

⁴⁸ International Conferences, 1933-1940, p. 160.

⁴⁷ As to the point whether aid to a legitimate government is to be regarded as "intervention." see above, note 3.

⁴⁶ For a study of the legal aspects of the case, see N. J. Padelford, "International Law and the Spanish Civil War," in this JOURNAL, Vol. 31 (1937), p. 226, and *International Law and Diplomacy in the Spanish Civil Strife*, 1939.

As preparations are being made for the establishment of a new international organization whose purpose is to be the maintenance of order and the promotion of justice, what principles of law are to be adopted to meet the situations formerly giving rise to acts of intervention? What positive and constructive measures are available to make the prohibition against intervention practically effective? The answer would seem to depend upon the possibility of substituting the collective action of the community in place of the unilateral action of the individual state, or the action of an exclusive group of allied powers.49 (The true criticism of intervention is not that it has been in every case without justification, but rather that even in those cases in which, as time has gone by, it would appear that the particular intervention was undertaken in the interest of law and justice, the action of the intervening power has of necessity been arbitrary. For action is always arbitrary where the intervening state is the judge of its own case. Even where the results are good the use of force by the individual state must inevitably weaken the general structure of order and justice in the community.

That the international community as a whole must be the ultimate repository of the practical rules upon which the conflicting claims of states must be decided would not seem open to question. Broad principles, such as national security, independence, and equality must be reduced to concrete rules, whether by formal codification of the law or by the progressive adjudications of an international court of justice. The higher right of the community to define the law and to provide for its practical application is not absolute, and under the existing circumstances doubts may be entertained whether the fullest justice is to be obtained through community The best that can be said is that the alternative to community action is individual action, and individual action is likely to give even less justice than community action, quite apart from the fact that it may readily lead to general lawlessness. Obviously in the determination of community action the influence of the leading powers will be felt, \$11 the more so when they have shown the self-restraint involved in substituting community action for individual action.

(Within the more limited circle of the inter-American community the first application of collective intervention came with the signing of the Convention on the Provisional Administration of European Colonies and Pos-

⁴⁹ The idea of "collective action," in the sense of the action of the leading powers, is discussed in a number of the older works on international law. Hall, with his usual shrewdness and legal precision, thought that there was "fair reason for hoping that intervention by, or under the sanction of, the body of states on grounds forbidden to single states, may be useful and even beneficent. Still, from the point of view of law, it is always to be remembered that states so intervening are going beyond their legal powers": International Law, § 95. By contrast Fiore, building a new law for the future, based upon his conception of a Magna Civitas, devoted a title (XIX) to the "Duties of Collective Intervention."

sessions in the Americas, at Havana in 1940. Here was a direct refusal to recognize the validity of the transfer of colonial territory from one belligerent to another, accompanied by a recognition that in consequence of the war certain territories belonging to some of the belligerents might be temporarily without a responsible government, "thus creating a state of danger to the peace of the continent and a state of affairs in which the rule of law, order, and respect for life, liberty and the property of inhabitants may disappear." In consequence the American States, acting in their capacity as "an international community," announced their "unquestionable right" to take the territories under their provisional administration.

(In 1942) at the Meeting of Foreign Ministers held at Rio de Janeiro, the American States) after recommending to themselves individually the breaking off of relations with the Axis Powers, (adopted a resolution on "Subversive Activities," by which they pledged themselves to prevent individuals or groups from engaging in activities detrimental to their security; at the same time recommending the control of organizations directed or supported by non-American states which were then or might be in the future at war with American countries. By the same resolution provision was made for an Emergency Advisory Committee of Political Defense, the purpose of which was to study and coördinate the measures recommended in the resolution.

The creation of the Committee of Political Defense proved to be the occasion for a new application of the procedure of consultation. The Committee, acting in a representative character on behalf of the twenty-one American Republics, had sought to formulate a series of "programs" to be adopted by the legislatures of the American Republics in pursuance of the resolution of the Rio Meeting directed against "Subversive Activities." 12 In the course of formulating its programs the Committee sought the cooperation of the several governments and conducted careful inquiries into the conditions prevailing in each country. Inasmuch as the inquiry was conducted with the consent of the individual governments no question could be raised of interference by the Committee in the domestic affairs of the different When, however, the Committee was confronted with a revolution in Bolivia which appeared to it to be "the first of a series designed to break down the existing anti-Axis front in South America" it decided that the question of suppressing subversive activities could no longer be left to the individual state and that joint action by the American Republics was necessary.53

Within four days of the revolution in Bolivia the Committee adopted, on December 24, 1943, a resolution recommending that the American Re-

⁵⁰ International Conferences, 1933-1940, p. 373.

⁵¹ For the text, see this JOURNAL, Vol. 36 (1942), Supplement, p. 76.

²² See C. B. Spaeth and W. Sanders, "The Emergency Advisory Committee for Political Defense," in this JOURNAL, Vol. 38 (1944), p. 218.

²³ Same, p. 226.

publics agree not to recognize any new government set up by force before exchanging information relative to the circumstances which led to the establishment of such government and before consultating with one another in order to determine whether the government was complying with its inter-American commitments for continental defense. Upon acceptance of the formula by nineteen of the American governments the Committee adopted a second resolution applying the formula to the conditions in Bolivia, notwithstanding the fact that the new President of Bolivia had announced the intention of his Government to live up to its international and inter-American obligations. Following consultation, the nineteen governments announced their respective individual decisions not to recognize the new Bolivian Government.

Here was a form of collective intervention hitherto without precedent in inter-American relations. Taken separately and individually the act of any one of the American governments might have come within the prohibitions of the Montevideo Convention of 1933 or the Buenos Aires Protocol of 1936. For the use of non-recognition as a method of coercion might well have been regarded as within the forms of intervention contemplated in the two agreements. The circumstances were, however, exceptional. The security of the hemisphere was at stake; and the American governments apparently believed that they could safely take the drastic action recommended by the Committee of Political Defense once the danger of resorting to the sanction of non-recognition was removed by the necessity of common consultation in advance of individual action. The Committee of Political Defense had confined its recommendation to the "duration of the present world conflict"; and it would appear from the replies of the governments that this limitation of its scope facilitated its acceptance.

In the case of the coup d'état in Argentina, recognition had been accorded to General Ramirez shortly after he came into power on June 4, 1943. When, however, the Ramirez regime was overthrown in the following March recognition was refused to the new government under General Farrell in accordance with the recommendation of the Committee of Political Defense of December 24, 1943. The grounds for the refusal were that the new government was not fulfilling its obligations under the commitments of the Rio Meeting of Foreign Ministers and that the conditions prevailing in the

⁵⁴ For the text of the recommendation, see Department of State Bulletin, Vol. X, p. 20.

Same, p. 28. The Argentine member of the Committee was not a party to either resolution.

²⁶ The Government of Uruguay, in its reply to the resolution of the Committee of Political Defense, observed that it could not consider the plan proposed as having the character of a rule of American international law since, if given a larger scope than that of an emergency war measure, it would be open to criticism as being based upon the principle of intervention "long ago extirpated from continental law."

country constituted a danger to the security of the hemisphere. 57 Whether non-recognition was the wisest measure that might have been resorted to under the circumstances was a matter of doubt in many quarters. 58 The feature of the case which is of importance for the future of international law is the fact that joint action was taken by the American Republics, although each acted upon its individual responsibility.

(It is of interest to observe that in the replies submitted by a number of the American Governments to the Dumbarton Oaks Proposals there is a clear recognition that the establishment of the new international organization, with its provisions for collective security and for the settlement of disputes, will of necessity imply the right of the United Nations to adopt measures which, if taken by an individual state upon its own arbitrary * initiative, would be classed as intervention. 59) The distinction, however, between collective and individual intervention is, as we have seen, fundamental. If the new organization can be made truly representative of the international community, its supreme authority to maintain the peace may in certain cases involve restrictions upon the possible lawless conduct of an Action by the whole community in such cases would not individual state.

⁵⁷ See press release of July 26, 1944, Department of State Bulletin, Vol. XI, p. 107, where it is said: "Efforts have been made to confuse the issue by charging that the policy followed by the American republics and their associates among the United Nations constitutes a departure from the normal rules and procedure with regard to recognition and amounts to intervention in the internal affairs of Argentina. This contention disregards completely the foundation on which the policy of non-recognition rests, namely, the defense and security of the hemisphere. Furthermore, it overlooks the fact that this policy was adopted after full and free consultation among the American republics, and that it is the logical outgrowth of the multilateral agreements which all of them accepted in order to make that defense effective. The American republics have expressly declared that this policy does not affect, and has nothing to do with, the ordinary rules and procedure for recognition in time of peace." To the same effect: C. G. Fenwick, "The Recognition of New Governments Instituted by Force," in this JOURNAL, Vol. 38 (1944), p. 448, except that the article finds the refusal of recognition consistent with the rule that one of the conditions of recognition must be the fulfillment of international obligations.

58 See in this connection, J. L. Kunz, "The Position of Argentina," in this JOURNAL, Vol. 38 (1944), p. 436.

59 The Venezuelan memorandum, for example, in commenting upon the power of the Security Council to recommend, at any stage of a dispute, appropriate procedures or methods of settlement, observed that "it would seem expedient to indicate that the intervention of the Council would take place after the ordinary means of settlement had failed." The Uruguayan memorandum, in commenting upon the power of the Security Council to take the measures necessary for the maintenance of peace in the event of a failure of the procedures of peaceful settlement between the parties, observed that "although the Government of Uruguay adheres to the principle of non-intervention, it considers collective intervention justified in the case of a state which constitutes a threat to the peace, it being the duty of the Organization to determine the modalities of such intervention": Inter-American Conference on Problems of War and Peace: Handbook for the Use of Delegates, Pan American Union, 1945, pp. 137, 140.

be an infringement of the principle of "sovereign equality," but rather the condition of its continuing validity.60

At the Conference on War and Post-War Problems held at Mexico City from February 21 to March 8, 1945, a combined declaration and recommendation was adopted under the title "Reciprocal Assistance and American Solidarity" to which the special name was given of "The Act of Chapultepec." 61 In its elaborate preamble the Act recites certain principles which the American States "have been incorporating in their international law." The second of these principles is "the condemnation of intervention by a state in the internal or external affairs of another," and reference is made to the Montevideo Convention of 1933 and to the Buenos Aires Protocol of 1936. Part I of the Act declares the principle that an attack by a state "against the integrity or the inviolability of the territory, or against the sovereignty or political independence of an American State" shall be considered as an act of aggression. A minimum definition of aggression is given, consisting in the invasion by armed forces of one State into the territory of another. Part II of the Act recommends the conclusion of a treaty establishing procedures by which threats or acts of aggression may be met. the measures proposed including the breaking of diplomatic relations and the use of armed force.

The Act of Chapultepec may thus be said to be the logical supplement to the inter-American principle of non-intervention. It proclaims the higher authority of the inter-American community and its responsibility for the maintenance of law and order; it foresees the necessity under which the community may find itself of taking positive measures to uphold the law in the event of its possible violation by an individual state; and it recognizes in respect to the fundamental right of self-defense that the only practical condition upon which the individual state can be denied the right to take the law into its own hands is that the community as a whole must be prepared to take action in its own name.

But besides the measures for cooperative defense adopted in the Act of Chapultepec, the Conference at Mexico City contemplated other far-reaching changes in the inter-American system. A new charter is to be drawn up

*O'The use of the phrase "sovereign equality" in Chapter II of the Dumbarton Oaks Proposals was clearly not intended to prevent collective intervention, but rather to assure the members of the new organization that there was no plan of setting up a "super-state": Recommendations and Reports of the Inter-American Juridical Committee, p. 137.

The Brazilian jurist Accioly, in commenting upon and dismissing the suggestion that the League of Nations might have a right of intervention in regard to its members, speaks as follows: "Nevertheless, under a more advanced system of international organization, when the League of Nations might come to be a truly universal institution possessing the prestige it now lacks, there is no doubt that the mission of intervention should be confided to it in certain specified cases. That would be the way to avoid certain abuses and injustices that are so common to-day"; Traité de Droit International Public, 1940, Vol. I, p. 299.

a For the text of the Act, see Department of State Bulletin, Vol. XII, p. 339.

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for the reorganization and strengthening of the system. The charter is to pledge the American Republics to the recognition of international law as the effective rule of their conduct, the fundamental principles of which are to be formulated in a Declaration of the Rights and Duties of States and a Declaration of the International Rights and Duties of Man. It is clear that the acceptance of these fundamental principles and their practical application to concrete situations when they arise will involve the extension of the procedures of consultation and of judicial settlement, in order that the authority of the community may replace the former intervention of individual states. Taw can not be maintained by the mere proclamation of principles; it requires the active functioning of executive and judicial agencies and we must be prepared to accept the possibility that the agencies of the community may at times be called upon to uphold the law by some form of collective intervention. **Declaration**

In the interest of international jurisprudence it would seem desirable not to use the term "intervention" when speaking of the collective action of the whole body of states under circumstances where the action of an individual state would constitute intervention. What would be arbitrary for the individual state would in the case of the whole body of states be no more than the exercise of the higher right of the community to maintain law and order and to see to the observance by the separate states of their obligations as members of the community. Obviously the action of the community must be within the scope of its authority, the community itself being subject to the law. But, assuming that the community is acting under its charter powers, its action might be better described by some such phrase as "law enforcement", "maintenance of law and order," or "collective action in the interest of the community" than by a term that evokes historical memories of a time when cooperation was less further advanced.

The Charter of the United Nations, now under preparation at San Francisco, contemplates a corresponding right of the international community as a whole to maintain certain agreed standards of conduct. Assuming that among these standards may be the principle of open channels of communication and information, a violation of the principle would become a matter of concern for the international community and would call for some form of collective intervention.

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POWER POLITICS AND INTERNATIONAL ORGANIZATION *

By HERBERT W. BRIGGS

Of the Board of Editors

The Charter of the United Nations, signed at San Francisco on June 26, 1945, states in Article 2 (1) that "the Organization is based on the principle of the sovereign equality of all its Members!" Since the outstanding characteristics of the Charter are its recognition of the actual and legal inequality of the Members of the United Nations, and its provisions empowering the Organization to take action, binding on its Members, without their unanimous consent, an understanding of the Charter will be enhanced by placing its dominant features in their conceptual and historical setting.

Justice Oliver Wendell Holmes once made the pronouncement that "sovereignty is pure fact"; but sovereignty is not a fact: it is a juristic theory. Viewed internally this juristic concept may have performed a useful role in emphasizing that within each state there must be one, and only one, source of law in a formal sense. However, the transfer to international relations of a concept which emphasizes the supremacy of the state in the field of law has meant, in the words of one writer, that "the sovereign state does not acknowledge a central executive authority above itself; it does not recognize a legislator above itself; it owes no obedience to a judge above itself." Another writer ascribes to doctrines of sovereignty the function of laying "an impenetrable smoke screen round the key position in any system of power politics, the position occupied by the sovereign state."

In the courts a more limited conception of external sovereignty has prevailed. Thus Judge Dionisio Anzilotti in the Austro-German Customs Regime case before the Permanent Court of International Justice was of the opinion that external sovereignty or independence meant "that the state has over it no other authority than that of international law." Perhaps one should not quarrel with a conception of sovereignty as independence subject to law; yet the form in which it is expressed soothingly misdirects our attention from the essential problem—the creation of institutions to establish the rule of law.

Akin to the doctrine of sovereignty in its practical consequences is another juristic concept: the legal equality of states. It is twenty-five years now since Edwin Dickinson pointed out in his book The Equality of States in International Law that this conception, nurtured in the doctrines of natural

^{*} Adapted for this JOURNAL from a paper read at Cornell University on August 1, 1945. The full text will be published late in 1945 by the Cornell University Press in a symposium entitled The United States in the Postwar World.

law and natural rights, and transferred by analogy from persons to states, has taken two divergent forms. The first—equal protection of the law or equality before the law—is essential to any advanced legal system, but "is not inconsistent with the grouping of states into classes, each of which the law regards differently." Thus each state has an equal claim to respect for whatever rights it may have and an equal obligation in the performance of whatever duties it may have; but to assert, as does the second conception of state equality, that all states have equal rights—or even an equal capacity for rights—is contrary to fact, and its advocacy has stunted the growth of international institutions of government. The point may be further illustrated by reference to individual equality within the state. Within a political society the attainment of equality before the law has not involved as a necessary consequence an identical equality of rights among men; not all men are sheriffs, judges, or legislators. Yet in the international field each state, basing its demands on concepts of sovereignty and absolute juridical equality, has traditionally claimed a right of equal participation not only in quasi-legislative bodies but in the executive councils and judicial organs designed to apply the law.

It is the practical consequences drawn from these concepts with reference to international organization which justifies their discussion here. More specifically, the development of international institutions adequate to serve the needs of the international community has been thwarted by claims derived from the concept of sovereignty that no new rule of international law is binding on a state without its consent; that any membership in, or compulsion by, an international organization must be based on consent; that no court or council has jurisdiction over the acts or disputes of a state without its consent. Similarly derived from the concept of equality have been claims of equality of representation, membership, and voting in international organizations and their organs; the unanimity rule (i.e., the rule that the majority may not bind the minority); and an equality in refusing to ratify decisions of international organs.

The attempt, made especially during the past century, to establish these claims as principles of law has come up against the hard fact of the actual inequality of states. The distinctions between World Powers, Great European or Asiatic Powers, intermediate states, and lesser states depend upon the over-riding criteria of power—military, economic, technological, geographical, demographic, and political. In the light of this fact concepts of sovereignty and equality have played a dual role, supporting the Great Powers in their refusal to accept legal limitations on their actual power and being used as a largely ineffectual shield by the smaller states in an attempt to compensate their actual inequality.

With the criteria of power this paper is less concerned than with the politics of power—with purposes, methods, and results. Since the power of a state has meaning only in relation to the power of other states, there

is a constant struggle for security, expressed in negative terms as the power not to be coerced. Writing in *Foreign Affairs* in 1932, Karl Radek, then editor of *Izvestia*, said:

... the Soviet Union cannot remain indifferent to the changes which are taking place in Manchuria, through which or near which pass the lines of communication giving access to her Pacific ports.

... The Soviet Union is strong enough to defend her territorial integrity and her interests. Concentrating her efforts on building up peaceful industries for meeting the needs of her own population, keeping aloof from armed interference with the affairs of foreign nations, the Soviet Union will seek a peaceful settlement of all conflicts which may arise between her and her neighbors. She will base her policy exclusively on her own interests, which correspond with the interests of peace both in the east and in Europe.

Whether the expression of power in terms of security is merely the tribute which vice pays to virtue each of us can decide for himself; but even if we admit that national security is the primary purpose of the politics of power, it remains true that in a system of power politics actual power not to be coerced involves the power to coerce. Poland is a neighbor of Soviet Russia; and security, like power, is relative.

The pursuit of national interests by the methods of power politics is based on what Schumann terms "the assumption of violence": a willingness to use the instruments of power, to take the risks involved, to use or threaten force in order to maintain or improve one's relative position. Moreover, an important characteristic of the methods of power politics is the reliance on national action. Intervention, military power, imperialism, even policies of alliance and balance of power, are methods by which an individual state arbitrarily employs physical force or more subtle pressures, politics, or realistic bargaining to secure its national interests. The methods may be contrasted with collective security—a system in which the threat or use of force in international relations would be controlled by a responsible organ of the international community in accordance with generally accepted principles.

That the pursuit of national security through the politics of power has sometimes resulted in a fortuitous world order cannot be denied. More or less precarious equilibria between the Great Powers have temporarily stabilized large areas; and the security of smaller states has sometimes rested on the fact that they were focal points of tension between the Great Powers. Where such equilibria and tensions were for a time established, they had the virtue of being in accord with the realities of power; but the vice lay in the essential instability and appalling irresponsibility of a system in which peace and international order were merely chance results of the national pursuit of power.

The need for a more direct attack on the problem was given some recogni-

tion in the nineteenth century. During periods of equilibrium among themselves, the Great Powers realistically adjusted tensions, reconciled divergent interests, liquidated trouble spots, preserved order among lesser states, and in general exercised executive functions of government. By the Treaty of Chaumont, signed in March, 1814, Austria, Russia, Prussia, and Britain agreed "to devote all the resources of their respective states to the vigorous prosecution of the present war"-against France-"and to employ them in perfect concert, in order to obtain for themselves and for Europe a general peace, under the protection of which the rights and liberties of all nations may be established and secured." At the Congress of Vienna all Europe except the Turks was represented. The smaller states came expecting that the Congress would be a European parliamentary assembly in which they would participate on a basis of equality with the Great Powers; but the latter had no intention of permitting the small states to remake the map Lord Castlereagh, British Foreign Minister, had prepared an elaborate scheme for convening the Congress in plenary session merely to approve decisions previously made by the Big Four. In this way, he argued, "you obtain a sort of sanction from them for what you are determined at all events to do." When Talleyrand, French Foreign Minister, arrived in Vienna, he championed the rights of small states and insisted on a full meeting of the Congress but the Big Four admitted France, making it the Big Five, and the Congress never met in plenary session.

At Vienna, writes Dickinson, the Great Powers "rearranged the map of Europe, restored dynasties, confirmed the partition of Poland, united Belgium with Holland, neutralized Switzerland, created the German Confederation. . . ." As Lord Palmerston later observed:

The tide of war had swept over the whole surface of Europe from the Rhine to Moscow, and from Moscow back to the Seine; all the smaller States of Europe had been conquered and reconquered, and were considered almost at the arbitrary disposal of the Great Powers whose armies had decided the fate of the war. . . . The smaller Sovereigns, Princes, and States had no representatives in the deciding Congress, and no voice in the decisions by which their future destiny was determined. They were all obliged to yield to overruling power, and to submit to decisions which were the result, as the case might be, of justice or of expediency, of generosity or of partiality, of regard to the welfare of nations, or of concession to personal solicitations.

By the Quadruple Alliance the Great Powers agreed to renew their meetings to consider measures which "shall be considered the most salutary for the repose and prosperity of nations, and for the maintenance of the Peace in Europe"; and at Aix-la-Chapelle in 1818 it was made clear to small states claiming participation that no principle of the equality of states entitled them to admission. The Confederation of Europe soon degenerated into a league to maintain despots in power against the rising tides of de-

mocracy and nationalism, but, as W. Allison Phillips has written, the significance of the Confederation "is, that it represented, whatever the motives of the several Allies may have been, an experiment in international government."

The Confederation of Europe was shortly replaced by the Concert of Powers, of which Drouyn de Lhuys was later to say: "It is the five powers to which belongs the right to regulate interests which affect Europe as a whole," and M. Hanotaux: "The European Concert is the sole tribunal and authority before which everybody must bow." Particularly with reference to the Eastern Question, writes James W. Garner, the Concert assumed authority "to dictate settlements, establish arrangements, and to supervise their execution." It freed Greece, Roumania, Serbia, and Montenegro from Turkish rule; "in some cases their kings were selected with the approval of the Concert; their constitutions were submitted to its approval"; it drew their frontiers, and placed some of them under its guaranty. Elsewhere, "it permitted the dissolution of the unnatural union between Belgium and Holland and forced the latter to accept its decision; it neutralized Belgium, Luxembourg, the Black Sea . . . ; it blockaded coasts to prevent hostilities; it sent troops to Syria to pacify disturbances there; it established a system of control over the finances of Egypt and Greece; it exercised collectively the power of coercion, restraint, legislation, supervision and guardianship over a considerable part of Europe." The sovereignty and equality of states, he adds, "found little recognition in the numerous conferences which were held to regulate these affairs or in the decisions which were reached. The right thus asserted and exercised by the Powers had no legal foundation and no political basis other than the claim that it was the right and duty of those which had the power to exercise a guardianship in the interest of the general peace and public order."

Sporadically throughout the nineteenth century the Great Powers, acting collectively, regulated certain affairs and certain areas. They succeeded only where there existed either a community of interests among themselves, or where opposing groups were sufficiently balanced in power to prevent unilateral action by one state or one group to the detriment of others. interests and purposes of each of the Great Powers were basically national. For example, national security was served by stability in a certain area (the France of the post-Napoleonic era; the Balkans throughout the nineteenth century) or by controlled change (an assurance sought that the breakup of Turkey's European possessions would not give to any Power a preponderant advantage in south-east Europe or the Mediterranean area). However, a more than incidental consequence of collective action by the Great Powers was a degree of stability and world order. To the extent that they adjusted inter-Power rivalries, intervened collectively in the affairs of smaller states, or liquidated tensions, the Great Powers filled a void; in a functional sense they constituted an international security council.

Their authority, however, was self-assumed, self-defined, and self-limited. Despite their occasional assertions that they were acting for the international community of states, there was no defined responsibility, no constitution, indeed no organization of the community which could confer authority or entrust them with responsibility. Nor did the Concert itself have any permanent organ meeting periodically for expediting discussion or permitting prompt action—a lack which was deplored in the summer of 1914 when the Concert had long since split into rival camps and the lights were going out all over Europe.

In 1919, when the League of Nations was being fashioned in Paris, there were those who, cognizant of the lessons of the European Concert, wished to build the League around the idea of the preponderance of the Great Powers. Certainly the Peace Conference itself exemplified this preponderance. As at Vienna a century before, the Great Powers—this time the United States, the British Empire, France, Italy, and Japan-completely dominated the Paris Peace Conference, determining its organization and procedure, deciding that they alone could attend all sessions of the Conference and its commissions, though permitting representatives of smaller states to attend meetings at which questions concerning them were discussed, and making all important decisions, though permitting the smaller states to ratify the decisions of the Council of Ten or the Council of Four in plenary sessions of the Conference.) In such an atmosphere it is not surprising that Lord Robert Cecil envisaged a Council of the League of Nations composed exclusively of the Great Powers, who should meet annually, while the principle of the equality of states would be relegated to an Assembly of all the League members meeting every four years. He stated that the success of the League would depend upon the support of the Great Powers; they would run the League and it was just as well to recognize it flatly as not; the small states would probably join anyway.

The Covenant which eventually emerged was a victory for the smaller states. Recognition of the preponderance of the Great Powers was limited to permanent membership in the Council; the Assembly was to have equal authority with the Council on "any matter within the sphere of action of the League or affecting the peace of the world," although the Council was given priority in certain matters. The sovereign equality of states, while not expressly mentioned in the Covenant, found embodiment in the form most feared by General Smuts: the unanimity rule giving to every state, large or small, an absolute veto over practically all action by the League.

Although sixty-three of the world's seventy-odd states were at some time Members of the League of Nations, at no time were all the Great Powers parties to the Covenant. It is true that Maxim Litvinov declared, in February, 1938, when, of the Great Powers, only Britain, France, and the Soviet Union were participating in League affairs: "There is no state or bloc of states which could resist the united forces of the Members of the League,

even as it is composed today"; but, whether his estimate was right or wrong, the absence from Geneva of Germany, Italy, Japan, the United States, and almost a score of smaller states, undoubtedly conditioned the expression of League power.

Moreover, within the League the composition of the Council never accurately reflected the power situation. The four or five Great Powers in the League at any one time were never a majority of the Council and were at times confronted with from nine to eleven small, and frequently very weak, states, the vote of each of which was equal to that of a Great Power, with all its population, territory, and its industrial and military potential. not unnatural result was an "inner circle tendency" in the Council. gentlemen, representing only the Great Powers, met over a cup of tea or more potent libations and made decisions—as at Locarno—in advance of League meetings, and subsequently steam-rollered the decisions through the A more effective method was to deprive League organs of jurisdiction entirely on the plea that the matter was already being dealt with-or could better be handled—by the Conference of Ambassadors in Paris, an organ of the Great Powers, which, unhampered by League principles, disposed of many matters with considerable realism between 1920 and 1931. To attribute the failure of the League to the small states would be to misconceive the problem; it was the unworkable nature of the doctrine of equal rights that caused power, like water, to find its level, and the real decisions to be made outside Geneva.

The lessons were not lost on the drafters of the Dumbarton Oaks Proposals and the San Francisco Charter; in their approach to the problem of building a security organization which might work with, rather than in opposition to, the realities of power, they gave legal and practical recognition to the preponderance of the Great Powers and largely denied to small states those consequences derived from theories of sovereignty and equality which might hinder the Organization from taking, in the somewhat less than beautiful words of the Charter, "effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace," or from bringing about "by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

The preponderance of the Great Powers is recognized by the United Nations Charter in several ways. In addition to being members of the General Assembly on a basis of equality with all Members of the Organization, China, France, the Soviet Union, the United Kingdom, and the United States are permanent members of the Security Council, which will also include six other states elected by the General Assembly by a two-thirds vote. A more accurate reflection of the world power situation would have limited membership in the Security Council to the three real World Powers—

the Soviet Union, the British Empire, and the United States but the drafters wisely included a potential Great Asiatic Power—China—and a potential Continental European Great Power—France. Unlike the League of Nations Covenant, the United Nations Charter makes no provision for the naming of additional permanent members of the Security Council, so the chances of a local boy making good are definitely discouraged. The inclusion of six smaller states in the Security Council is counter-balanced by the second special privilege of the Big Five—an absolute veto on most matters—a veto which is not given to the smaller members. The third means by which the preponderance of the Great Powers is enhanced is found in the strictly limited powers conferred by the Charter on the General Assembly and organs other than the Security Council.

Another possible method of securing the special position of the larger states finds but scant recognition in the Charter. This would be the weighting of votes in the General Assembly, such as is found in other international organizations like the Bretton Woods International Monetary Fund and International Bank for Reconstruction and Development where the number of votes a state possesses depends upon its quota or subscription, and the Universal Postal Union, where, in effect, extra votes are given to states with colonies. The granting of the demand of the Soviet Union for separate membership in the United Nations for two of her sixteen principal political sub-divisions—the Ukrainian and Byelorussian Soviet Socialist Republics—aside from rendering the phrases in the Charter about the sovereign equality of all Members even less meaningful, is the only present step in this direction.

The significance of Great Power preponderance in the Organization will require further treatment, but it should be noted here that this preponderance is coupled with something entirely lacking in the Concert of Europe—namely, the principle of delegated responsibility. Not only is the authority which is obliquely conferred on the Great Powers by the Charter a delegated authority but its exercise is also circumscribed by an explicit statement of the purposes and principles in accordance with which the Organization and all its Members—including the Big Five—shall act. The Purposes of the United Nations (Art. 1), briefly stated, are to maintain international peace and security, to develop friendly relations among nations, to take measures to strengthen universal peace, to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, to promote and encourage respect for human rights and for fundamental freedoms for all, and to be a center for harmonizing the actions of nations in the attainment of these common ends.

The Principles in accordance with which the Organization and all its Members shall act (Art. 2) include first the provision that "the Organization is based on the principle of the sovereign equality of all its Members." In the context of the entire Charter this must be taken to mean merely that

the United Nations is not a super-state, but a confederation whose Members retain independence, subject to the legal obligations of the Charter. This interpretation is supported by the second Principle, according to which "all Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter," and by the seventh Principle which states, in part, that the Organization is not authorized "to intervene in matters which are essentially within the domestic jurisdiction of any state." This seventh Principle, which fails to provide for judicial determination of what constitutes an essentially domestic question, is a potentially dangerous limitation on the jurisdiction of the United Nations to accomplish some of its declared purposes, although a proviso adds, in effect, that a plea of domestic jurisdiction cannot be used to prevent enforcement measures by the Security Council in dealing with a threat to the peace or a breach of peace.

Principles 3 and 4 are exceedingly important, since, in connection with other provisions, their effect is to give a monopoly on the legal use of force to the United Nations Organization. Principle 3 reads, in part: "All Members shall settle their international disputes by peaceful means. . . ." and Principle 4 states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." These stipulations are no mere renunciation of war, but couple a positive obligation to settle international disputes by peaceful means with a prohibition on the threat or use of force. Noteworthy is the omission of the proviso found in the League of Nations Covenant that a state might lawfully resort to war three months after a failure to settle a dispute by certain pacific means.

Principle 5 of the United Nations Charter establishes in limited form the principle of collective security, by stating: "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action"; in limited form because any one of the Great Powers can veto preventive or enforcement action by the Organization and to that extent the security of a state is not collectively guaranteed.

The sixth Principle of Article 2 of the Charter is curious; it reads: "The Organization shall ensure that states which are not Members . . . act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security." This means that the Organization shall use force, if necessary, to compel a non-Member to act in ac-

¹With the exception of a limited right of self-defence under Art. 51, and the right to take certain enforcement measures against enemy states of the Second World War under Arts. 53 and 107.

cordance with principles by which it is not legally bound. It also raises the whole important question of membership in the Organization.

Article 4 of the Charter, after providing that "Membership in the United Nations is open to all . . . peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations," adds that the admission of any such state as a new Member shall be effected by a two-thirds vote of the General Assembly upon recommendation of the Security Council. These provisions contain several unfortunate features. Since such a recommendation of the Security Council must include the votes of each of the Big Five, any one of them could veto the admission of, for example, Switzerland or Sweden—just as Woodrow Wilson was able in 1919 to veto membership of Mexico and Costa Rica in the League of Nations. More fundamental is the objection previously noted that non-Members are not legally bound by obligations to settle their disputes by peaceful means, to refrain from the threat or use of force, or to assist in the maintenance of peace and security. even though the Organization assumes a police function in regard to Non-Members. It is for this reason that the admission of Argentina to the United Nations was fortunate and the exclusion of Spain, with or without Franco, unfortunate. The arguments used to oppose the admission of Argentina seem quite irrelevant. Fortunately for most of the states represented at San Francisco, the United Nations Charter contains no provisions relative to the "representative" or democratic character of its Members' governments. The United Nations is not democratic in structure or membership; nor is it fascist or communist: it is a functional security organization, and its tasks will presumably be lightened to the extent that states assume basic obligations for the preservation of peace. For the same reason the provision in Article 6 of the Charter for the expulsion of Members who persistently violate the Principles of the Charter seems unfortunate. Soviet Russia was expelled from the League of Nations and history shows that expelled states continue to exist and to exert a potent influence in international affairs. The attempt to punish a state by releasing it from fundamentally necessary international obligations is worse than ironical—it is a confession of failure. On the other hand, the idea contained in Article 5 of the Charter of suspending a Member "against which preventive or enforcement action has been taken by the Security Council" is excellent in principle, since the Member is suspended only "from the exercise of the rights and privileges of membership," and is not released from the obligations of membership. The procedure is faulty in granting to the Big Five a veto on suspension or restoration of rights, and, possibly, in failing to provide for suspension on other grounds.

Unlike the Covenant of the League of Nations, the United Nations Charter contains no stipulation granting Members a legal right to withdraw from the Organization. However, apparently because of the failure to modify

the rigidity of the Big Five veto on amendments to the Charter, the Report of the First Commission, approved by the San Francisco Conference in its 9th Plenary Session, contained a Declaration on Withdrawal, reading in part as follows:

The Committee adopts the view that the Charter should not make express provision either to permit or to prohibit withdrawal from the Organization. . . . If, however, a Member because of exceptional circumstances feels constrained to withdraw, and leave the burden of maintaining international peace and security on the other Members, it is not the purpose of the Organization to compel that Member to continue its cooperation in the Organization.

To this statement the Soviet delegation took violent exception, not because it seemed to sanction a right of withdrawal, but because, said its delegate, "such right is an expression of state sovereignty and should not be reviled in advance." If the exercise of this alleged right of withdrawal were as unlikely as the example cited by Mr. Gromyko, we would probably have little to fear. He pointed to Article 17 of the Soviet Constitution which reads: "To every Union Republic is reserved the right freely to secode from the Union of Soviet Socialist Republics," and proudly referred to it as "this right of sovereign states" and "a most striking manifestation of democracy." Unfortunately, however, the Declaration on Withdrawal continues: "Nor would a Member be bound to remain in the Organization" if its rights and obligations as a Member were modified by an amendment which it found unacceptable, or if a proposed amendment, duly accepted by a two-thirds majority, failed to secure the necessary ratifications.

These concessions to the sovereign equality of states are not contained in the Charter and are contrary to the spirit of Article 108 of the Charter, which reads: "Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council." Since the Charter contains no proviso such as is found in the League Covenant, that "no such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League"; and since, in the absence of a permissive treaty provision, no State may lawfully cease to be a party to an inconvenient treaty, it is the opinion of the writer that at most the alleged Declaration on Withdrawal sanctions only non-participation in the affairs of the United Nations, and that the non-participating state would still be a Member and would continue legally subject to the obligations of the Charter.²

*See, however, Secretary of State Stettinius' Report to the President on the . . . San Francisco Conference, June 26, 1945; United States Department of State Conference Series, No. 71, pp. 47–49.

All Members of the United Nations are members of the General Assembly, each state having one vote. This recognition of the legal equality of states is not lessened by the fact that the unanimity rule which prevailed in the League of Nations Assembly is completely discarded in the United Nations General Assembly. Decisions on important questions—such as recommendations with respect to peace and security; the election of members to the Security Council, the Economic and Social Council, the Trusteeship Council; the admission, suspension, or expulsion of Members; and budgetary questions—are to be made by a two-thirds majority of the members present and Decisions on other questions are made by simple majority of the This is a great advance over League of Nations states present and voting. procedure, but is compensated by the much reduced authority of the General Assembly as compared with the League Assembly. Where the latter had equal jurisdiction with the Council to "deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world," the powers of the new General Assembly are largely limited to discussion and recommendation. Its powers of discussion are broad enough to include any matter within the scope of the Charter, including consideration of general principles relating to the maintenance of peace, and even specific questions relating to the maintenance of peace, but "any such question on which action is necessary" must be referred to the Security Council either before or after "The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security," but its power to make recommendations is strictly limited by the provisions of Article 12 that: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests." Subject to the same exception, the General Assembly has the potentially important power to recommend measures for the peaceful adjustment of any situations likely to impair the general welfare, including situations resulting from violation of the Purposes and Principles of the Charter (Art. 14). The General Assembly also has important budgetary powers, the power to receive and consider annual and special reports from the Security Council and other organs, and power to initiate studies and make recommendations for international cooperation on political, legal, economic, social, cultural, educational, health, and human welfare matters and to further their development through the Economic and Social Council. Because of the sovereignty of states, explained former Secretary of State Stettinius to the Senate Foreign Relations Committee, the General Assembly does not have legislative power. However, through its agencies, it may prepare and consider draft conventions and call international conferences for their adoption, presumably subject to the old rule of ratification.

Turning now to the Security Council, we find that "primary responsibility

for the maintenance of international peace and security" is conferred (Art. 24) on this body by the Members of the United Nations, who "agree that in carrying out its duties under this responsibility the Security Council acts on their behalf," in accordance with the Purposes and Principles of the United Nations. And Article 25 contains one of the most important stipulations in the Charter: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." The importance of this obligation with reference to concepts of sovereignty and equality can be seen at a glance, but its full significance appears only from an examination of the powers of the Security Coun-Although the major responsibility for the maintenance and enforcement. of peace is placed on its shoulders, all Members of the United Nations are obligated to settle their international disputes by peaceful means of their own choice (Arts. 2 (3), 33 (1)). The Security Council may "call upon" the parties to settle their disputes by such means (Art. 33 (2)); it may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger peace or security (Art. 34); and it may at any stage recommend appropriate procedures or methods of adjustment of such disputes or situations (Art. 36). If the parties to such a dispute fail to settle it, they are obligated to refer it to the Security Council (Art. 37 (1)), which may decide either to "recommend" methods of settlement or terms of settlement (Art. 37 (2)). It should be noted here that no party to a dispute has a vote in decisions of the Security Council under Chapter VI for the pacific settlement of disputes (Art. 27 (3)).

Of prime importance is the power of the Security Council to determine the existence of occasions for the application of sanctions or enforcement measures to maintain or restore peace (Art. 39). Under the League of Nations Covenant "resort to war" was the only occasion for employing sanctions, and under League practice each Member decided for itself whether the occasion existed and whether to employ sanctions. In the United Nations Charter, the occasions for employing sanctions are either a threat to the peace or a breach of the peace and the existence of these conditions is determined by the Security Council in a decision legally binding on all Members of the United Nations. Furthermore, the Security Council may decide what diplomatic or economic sanctions are to be employed and "it may call upon the Members of the United Nations to apply such measures" (Art. 41). If the Security Council decides that economic sanctions are inadequate, "it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security" (Art. 42). Since the United Nations will have no international army of its own, all Members of the United Nations obligate themselves "to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities" necessary for maintaining peace and

completely satisfactory rules for the conduct of war can ever be worked out. At best, the rules may act as ameliorating influences on the horrors of war. In the long run international law and relations between states will be served best by a realistic recognition of the nature of war and the adoption of rules which will not run directly counter to the practice of belligerents. To do otherwise would be to mislead the layman as to the consequences of war. Of course, whether a nation decides to engage in a war will ordine by depend on what it conceives to be its chances of victory. Conceivably, however, its people may be more prone to provoke a war if they are led to believe that most of them will be relatively immune from its consequences,—if they believe, for instance, that they will not become subject to terrible new weapons which, in fact, will be used no matter what the conventions proscribe.

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THE FINANCIAL EXPERIENCE OF UNRRA

By Theodore A. Sumberg New York City

As the first working agency of the United Nations, already almost two years old, the United Nations Relief and Rehabilitation Administration is If special interest to students of international organization. unique features it has already grappled with many of the problems that will confront all future international organizations. Its financial experience is particularly interesting because all such organizations, whether dealing with political, judicial, or economic subject matter, have very early in their history to go through the difficult process of collecting funds from resolutely governments. The Economic and Social Council of the United Nations, in view of its coordinating authority over all international specialized agencies, cannot fail to be guided by the results of the financial experience of UNRRA. The International Monetary Fund and the International Bank for Reconstruction and Development can be expected to be especially attentive to UNRRA's experience because, like it, they require the collection of vast funds for more than administrative purposes.

The basic facts about UNRRA are fairly well known. It was established on November 9, 1943, just about a year after the Allied invasion of French North Africa, when representatives of the forty-four United and Associated Nations signed the Agreement at the White House. This Agreement provided for a legislative and policy-making Council made up of all members, a Central Committee of limited executive powers containing China, the United States, the Soviet Union, and Great Britain, and a chief executive or Director-General. The purpose of UNRRA is simply to aid in the relief and rehabilitation of the "victims of war" of the member countries at their request and after termination of the civil affairs responsibility of liberating military officials. The basic policies of UNRRA have been set up at three meetings thus far held by the Council, the first held at Atlantic City from November 10 to December 1, 1943, the second at Montreal from September 16 tc/26, 1944, the third in London from August 7 to 24, 1945.

16 tc/26, 1944, the third in London from August 7 to 24, 1945.

There has been a considerable withing down in the scope of UNRRA since the days of its planning by American and British officials in 1942 and 1943. This narrowing of UNRRA's field of authority has been carried out by specific policies formulated by the Council as well as by the bias of developing events. UNRRA was first conceived of as an agency of more or less supreme authority, empowered to assist in large-scale industrial and altural rehabilitation projects, that would have ultimate coördination

powers in all relief and rehabilitation operations. It is now clear, however, that UNRRA has only marginal authority, first because it operates only at the request of both military authorities and liberated national governments and, secondly, because it lacks supplies whose allocation must wait upon decisions of national supply agencies and the Combined Boards of the United States and Great Britain. Moreover, it has strictly circumscribed functions in areas liberated by the Soviet Union and only very minor ones in Italy, Germany and other ex-enemy countries. It has therefore turned out that, contrary to its original planners, UNRRA will not be able to participate in the larger rehabilitation efforts that must somehow be carried on. The narrow scope of UNRRA has been accepted by its operating officials who, with the apparent aim of forestalling public disappointment with its limited performance, have modestly designated it as a "service agency." ¹

After a warm initial response, public opinion has shown considerable disappointment in UNRRA, which prompted its officials at the Montreal meeting to make pleas for continued support. It was pointed out for instance by Richard K. Law, the British representative to the Montreal Council, that "If this, the first venture in practical peacetime coöperation among the United Nations fails, nothing is going to succeed." This report will enable us to appraise tentatively somewhat more than the financial performance of UNRRA to date.

Ι

The financial basis of UNRRA was laid at Atlantic City in the so-called Financial Plan, with minor modifications introduced at London and Montreal. This Plan sets up a distinction between the thirty-one countries which were not invaded, which undertake to make contributions for operating expenses, such as the purchase of supplies, transport, and so on, and the thirteen invaded countries, which are not required to do so though they may. There is also a distinction drawn among the latter between those having adequate gold and foreign exchange resources, which are to pay with such resources for assistance received from UNRRA, and those without such resources, which are to pay only in local currency. Except for slight changes made at Montreal and London, no assistance to ex-enemy countries is provided for in the Plan unless they are able to offer suitable foreign exchange and can also satisfy certain rigid non-financial provisions. Another basic distinction is made in the Plan between operating expenses and the much smaller amount of administrative expenses; all forty four member countries are required to contribute to meeting the administrative budget.

There is no compulsory basis for either operating or administrative con-

¹ See UNRRA—Organization, Aims, Progress, p. 3, put out as a public information pamphlet by the agency.

² These include Belgium, China, Czechoslovakia, Ethiopia, Greece, Luxembourg, France, Netherlands, Norway, Philippines, Poland, U.S.S.R., and Yugoslavia.

tributions to UNRRA. There obviously is no international governmental power to force contributions of member governments to UNRRA. The international agency must therefore be satisfied with contributions to it on a simple request basis. Article V, paragraph 1, of the Agreement merely states that "each member government will contribute." The policy provisions formulated at Atlantic City are slightly more specific in pointing out that "the Council recommends that each member government . . . shall make a contribution. . . ." The collection experience of UNRRA therefore reveals the degree of willingness of member countries to make their contributions, except where they are manifestly unable to do so.

As to operating contributions, their voluntary basis is somewhat weakened by the fact that no definite payment quotas are fixed. There was some suggestion in the planning stages of UNRRA that no definite quotas should be fixed at all, because countries might come to regard them as exactions and therefore would tend to hold back. It was suggested as an alternative that gifts of no specified amount should be requested and that diplomatic channels should be used to obtain the largest possible amounts. gestion was turned down as failing to provide a business-like basis for UNRRA's income. However, it was not possible to establish set quotas for the member countries. The individual or collective use of the economic indices of population, gold holdings, foreign trade, and others was found unsatisfactory. Reliance upon the national income of member countries as the basis for operating contributions was finally decided upon as most practicable and fair. The Financial Plan therefore recommends that governments of uninvaded countries shall contribute "approximately equivalent to 1 per cent of the national income of the country for the year ending June 30, 1943 as determined by the member government." • The Council left the estimation of the national income of each country to each government concerned, not only out of statistical modesty but as an acknowledgement of an element of truth in the principle of free consent.

The economic all-inclusiveness of national income, and the widespread practice of using it in measuring the relative economic strength of countries, recommends it as a basis for contributions in preference to alternative indices. However, its use by UNRRA, as well as by other international organizations contemplating its adoption, involves certain drawbacks. For one thing, of the thirty-one uninvaded countries of UNRRA, even moderately reliable national income estimates do not exist for more than six, and even for some of these the required information may be lacking for the stipulated year. The result is that most governments are in a position to make an estimate not entirely uninfluenced by the fact that it will serve as a contribution basis. Moreover, on such a basis the international agency can never have more than an approximate idea of its total receipts. For

³ First Session of the Council of the United Nations Relief and Rehabilitation Administration, Selected Documents, Resolution No. 14, Section 4, p. 45.

* Same, p. 45.

another thing, it is inequitable to ask the poor country to give the same percentage of its national income as the rich country; one per cent out of the standard of living of an average man in India, for instance, hurts more than one per cent taken from the average American. The pertinence of this consideration is recognized in the Financial Plan by approving lower contributions from countries where the one per cent recommendation may "conflict with particular demands arising from the continuance of the war or may be excessively burdensome because of peculiar situations." ⁵ However understandable this clause may be, its effect is to add to the discretionary basis of the operating contributions.

The Financial Plan conspicuously fails to set definite dates for the making The Plan simply recommends "that each member governof contributions. ment take at the earliest possible time such constitutional budgetary, administrative, or legislative steps as may be necessary to make its contribution available when needed for the purposes of the Administration."6 The failure to fix definite dates for payment is partly explainable by the impossibility of knowing at what times the relief and rehabilitation load will fall due. Another reason was the desire of the planners of UNRRA to obtain large sums from one wave of contributions at the beginning and thereby free the organization as much as possible from the necessity of periodically running to member government legislatures for additional It was thought that the 2 billion dollars or so expected upon the national income basis would tide UNRRA over for a long period, perhaps long enough to care for all or almost all of the work load, and therefore make it unnecessary for UNRRA to go hat in hand to member governments again. The failure of this hope will be discussed later.

Operating contributions are made payable in local and foreign currencies. According to the Plan the Council "recommends that as much as possible but not less than 10 per cent of the amount contributed by each member government . . . shall be in such form of currency as can be expanded in areas outside of the contributing country. . . . "7 Though not specified, it is taken for granted that the foreign currency in mind would be the dollar, except in the case of the United States which can make its full payment in dollars since they are universally acceptable. The purpose of the part payment in dollars by member countries is to provide UNRRA authorities with a definite volume of free funds to take advantage of supply opportunities wherever they may exist even, as expected to a small degree, in non-member countries. There was much early discussion around this provision in the attempt to square UNRRA's need for freely-spendable funds with the unquestionable bias of most member countries for maximum payment in their own currencies. The thought was frequently expressed that total payment in local currency would result in useless idle balances or in the dumping in UNRRA's lap of unwanted surpluses. The compromise

⁵ Same, p. 45. ⁶ Same, p. 46.

figure of 10 per cent was acceptable to UNRRA and to the contributory governments.

With total operating receipts of about 2 billion dollars, UNRRA will come to have about 1,415 million dollars (in dollars) and 585 million dollars equivalent in foreign currencies. The largest contribution on the national income basis was 1,350 million dollars (all in dollar balances) of the United States. The rest of the dollar sum will be supplied from the 10 per cent portion of the contributions of the other uninvaded countries. The 585 million dollar equivalent in foreign currencies will be supplied as the bulk of the contributions of the other countries making operating payments.

Repayment policies are dominated by the familiar lesson of the financing of relief operations of World War I, that is, that relief-receiving countries should not be saddled with a volume of debts that their economic position will not permit them to meet. The Plan therefore stiuplates that "an applicant government shall not be required to assume the burden of an enduring foreign exchange debt for the procurement of relief and rehabilitation supplies and services." Countries not having adequate gold and foreign exchange will therefore pay in local currency which will go toward meeting UNRRA's administrative and other expenses in particular areas. Financially-well-situated countries, like France, Belgium, and others, are expected to meet most of their relief and rehabilitation expenses independent of UNRRA's financial assistance, and for any aid given them reimbursement in foreign exchange will be made.

As to administrative contributions, all forty-four member countries are requested to contribute. Though they are not requested to, the thirteen invaded countries may contribute to the operational sum as well, but so far none but France (\$100,000) has done so. The contribution is here fixed by the Council as a definite quota, namely, a certain per cent of the total annual administrative budget; thus, the United States pays 40 per cent, Great Britain and Russia 15 (Russia later 10) per cent each, China 5 per cent, France 4 per cent, and 0.5 per cent for fifteen smaller countries. These sums are all payable in dollars. To lighten the financial burden of the uninvaded countries, they are permitted to treat their share of the administrative expenses as part of their operating contributions.

As an agency with obviously humanitarian aims, the Council of UNRRA did not feel it appropriate to formally exclude ex-enemy countries as eligible recipients of its assistance. However, this is the effect of its provision requiring full repayment in foreign exchange by such countries. Even apart from the huge reparation claims that will undoubtedly be placed against Japan and Germany, these countries, Italy, and other European ex-enemy countries have little disposable gold and liquid assets in their possession. The Council maintained this policy at its Montreal meeting, except for such minor changes as the approval of the expenditure (without

repayment) of 50 million dollars for special welfare aid to Italy, which was specifically designated, however, as not to "constitute a precedent for operations in other enemy or ex-enemy territories." Assistance to inhabitants of the Italian Dodecanese Islands, which will probably be reconstituted as Greek territory after the war, was also approved. In addition, the Montreal Council permitted under appropriate circumstances UNRRA assistance in removing United Nations nationals out of Germany, and the extension of medical aid to combat epidemics in Germany. When invited by the governments of liberated territory UNRRA may also assist in the repatriation of German nationals.¹⁰ Approval was also granted at this session of the Council for the grant of aid to any area in need important to the military operations of the United Nations, such as India, even though it was never invaded. The same stipulation of maximum repayment in foreign exchange was fixed. The Central Committee also authorized, early in June, UNRRA assistance to displaced Italians outside of their country's Though these provisions have broadened UNRRA's eligible clientele, the main effort is still expected to be expended among the thirteen invaded member countries."

According to newspaper dispatches, the recent London Council meeting also added some minor new provisions to the Financial Plan, notably the inclusion of Formosa, Korea, Austria, and Italy among recipient-eligible areas, the last-named country having its previous maximum figure on financial aid eliminated. To take account of greater need for assistance than was originally contemplated, including \$250,000,000 of aid requested by the Ukrainian and White Russian Republics, the Council also recommended that the thirty-one uninvaded nations contribute an additional 1 per cent of their national income for the year ending June 30, 1943. This action was not taken without opposition and without expressions of doubt of national compliance by some delegates at the meeting. The Council also voted to add the Ukrainian and White Russian Soviet Socialist Republics to its membership, and to include France and Canada on its Central Committee, the first country in view of its recognition as a full-fledged member of the

⁹ JOURNAL, Second Session of the Council, Volume II, No. 11, p. 145.

¹⁰ Any other relief aid required by Germany will be a responsibility of the occupying military officials. Prime Minister Churchill has promised that food will be given to the German and Austrian people. See Parliamentary Debates, House of Commons, 1940, quoted by Allen G. B. Fisher, "The Constitution and Work of UNRRA," International Affairs, July 1944, p. 328.

¹¹ Minor provisions in the Financial Plan cover contributions to UNRRA by non-member countries and private organizations, auditing, budgetary, and other matters that need not be discussed here. For obvious political reasons, neutral countries like Sweden and Switzerland have apparently preferred to extend relief assistance directly to the relief-receiving countries rather than via UNRRA, as the agency invites them to do. According to unpublished information given this author by UNRRA's Public Information Director, private individuals and agencies have contributed \$68,868 to UNRRA up to April 30, 1945. Their direct expenditures for relief abroad have been much larger.

Big Five and the second because of its prompt supply contributions to the organization.

Π

The signing of the UNRRA Agreement by the forty-four nations took place on November 9, 1943. Though not all national representatives signed subject to ratification by their governments, it was necessary for almost all member governments to take some appropriate legislative and executive action to approve their participation. This process of approval proved to be unexpectedly long. Most countries had not yet indicated their formal approval six months from the date of the signing of the Agreement document. Five countries,-Poland, Bolivia, Venezuela, Uruguay, and Colombia,were still unpledged a year after November 1943, but have since signed. The long process of approval of UNRRA, if it foreshadows the experience of other international agencies, points to the necessity of speeding up planning efforts behind other such contemplated agencies. To be sure, it is possible that the formal approval of UNRRA required more time than will prove to be true of other international organizations because of special wartime difficulties and because UNRRA pioneered onto new ground, so to speak, so far as international organizations to develop out of this war are concerned. Yet it was widely recognized that there was a greater urgency to UNRRA in the sense of human need than will be true of other organi-

Approval was usually, but not always, followed by the making of the stipulated administrative contribution. These were specifically requested in December 1943. According to official United States sources, eight of the member countries have failed to meet any of their administrative quotas as of December 31, 1944, and three have done so only in part. According to official publications of UNRRA, some countries still remained delinquent for administrative payments on July 24, 1945. The totally-delinquent countries at the end of 1944 included Bolivia, Chile, Costa Rica, Ecuador, Iran, Iraq, Paraguay, and Uruguay, while Australia, Russia, and Yugoslavia have paid in part, \$16,000 of a quota of \$150,000, \$200,000 of a quota of \$1,500,000 (later 1 million), and \$5,000 of \$70,000, respectively.\frac{12}{12} The administrative receipts for 1944 amounted to \$8,416,000 of a budget of \$10,000,000 estimated by the Director-General for the entire calendar year of 1944 and for the last two months of 1943.\frac{13}{2}

The administrative budget for 1945 was estimated at the Montreal meeting at \$11,500,000, of which \$4,000,000 is to come from the unexpended ¹² Second Report to Congress on United States Participation in Operations of UNRRA, December 31, 1944, pp. 16 and 17.

¹³ This budget is larger than for any other international organization established to date. The top annual figure for the League of Nations, including the International Labour Organization and the Permanent Court of International Justice, was never more than about \$7,400,000, for the fiscal year of 1938.

The only other change in administrative budget balance of the year before. arrangements made at Montreal was the reduction of Russia's quota percentage for two years from 15 to 10 per cent, or from \$1,725,000 to \$1,150,-000, leaving the difference of 5 per cent unallocated. Until it pays this amount, and also the unsatisfied portion from 1944, Russia will be liable for \$1,950,000 to UNRRA on administrative expense account. In view of Russia's traditional reluctance to hold large dollar balances abroad, this tardiness may simply be due to a scarcity of available funds at a time when gold shipments from Russia are attended with great internal and overseas transport difficulties. And yet Russia could meet its obligation to UNRRA of almost 2 million dollars on single air cargo shipment of only about two tons of gold (net weight). Much larger amounts of gold have been delivered to the United States during the war to meet obligations to the American Government (about \$55,000,000 in 1941 and 1942). The reports of political friction between the Soviet Government and UNRRA, if true, would seem to be a more likely explanation of the laggard payments.14

Though UNRRA has not been embarrassed by any lack of administrative funds, its collection experience in the first year and a half cannot be said to have been satisfactory. The available facts indicate that its collection experience with the far more important operating contributions has been even less satisfactory. As of December 31, 1944, about a year since the signing of the Agreement, only three countries,—Canada, Brazil, and Great Britain,—were paid up in full, and only four,—Iceland, Liberia, South Africa, and the United States,—in part. Eleven additional countries paid in full by April 30, 1945. Total operating contributions on this date amounted to almost 1.3 billion dollars of the expected 2 billion or so. This figure is due almost entirely to the 800 million dollars of the United States (out of a total of 1,350 million) 16 and the \$322,400,000 of Great Britain.

¹⁴ Discussion of Soviet-UNRRA political relations is scanty. See the following: Christian Science Monitor, January 27, 1945, p. 14; New York Herald Tribune, March 24, 1945, p. 7; and New York Times, April 5, 1945, p. 14. UNRRA's press release No. 173 reports that \$800,000 of Russia's administrative liability was in process of transfer on June 13, 1945.

¹⁵ According to information given me by the Public Information Director, these countries are Australia, New Zealand, Venezuela, Uruguay, Bolivia, Peru, Panama, the Dominican Republic, Costa Rica, Haiti, and India. Not all of these countries made their full sums available for 1945. Costa Rica is mistakenly omitted from the Public Information Director's list; it agreed to be responsible for its operating contribution on April 10, 1945. See Foreign Commerce Weekly, May 19, 1945, p. 50, and Monthly Review of UNRRA, May 1945, p. 12.

16 Only 450 million dollars was actually appropriated and the remaining 350 million dollars held for transfer under the Lend-Lease Act and supplementary acts, subject to the approval of the United States Joint Chiefs of Staff and the Foreign Economic Administrator. These sums do not measure the full contribution of the United States Government for relief and assistance abroad. About 1 billion dollars is expected to be spent for civilian supplies by the United States military command for foreign distribution; about 562 million dollars has already been appropriated. However, it is not known what portion of this amount, as well

The thirteen uninvaded countries totally delinquent for operating contributions on April 30, 1945, included ten from Latin America, and Egypt, Iraq, and Iran.¹⁷ Falling into the "small nation" category, most of these countries have been militantly aggressive at international conferences the past few years in demanding their full rights. Their financial relations to UNRRA have shown that their zeal to meet their responsibilities is not equally strong. As to the Latin American countries, the South American Journal of September 30, 1944, a friendly journal, declared that "it would appear that these nations on the whole do not fully realize the gravity of the situation in the war-torn countries and their moral obligation to come to the assistance of those who have suffered so much." The poor financial showing of Latin American countries in general is in line with their behavior in the League of Nations.

There appears no reason to believe that any of the fourteen countries will fall down entirely in its operating contribution. A few countries excepted, all of them have made some progress in carrying forward the legislative and executive action required to effect their contributions. There may be a degree of justification for their tardiness in the Atlantic City provision that countries will make their contributions available "when needed for the purposes of the Administration" and in the fact that in 1944 UNRRA's need for funds was very small. Yet the Director-General has requested these funds as soon as possible and has seen fit on more than one occasion to complain of the late action as interfering with the necessary planning work of the organization. Moreover, there seems no reason to believe that the thus far delinquent countries have failed to take action because of the slow development of UNRRA's participation in European relief, but rather because of the slowness of their national constitutional machinery and of their lack of zeal to meet UNRRA's modest requests.¹⁸

What has been UNRRA's experience with the use of national income as a contribution basis? Though a firm conclusion is not possible because of the partial experience in payment, the early results have not been satisfactory. The United States, Great Britain, and Canada apparently found no diffi-

as of the funds spent through UNRRA, will be returned by financially-well-situated governments. Britain, Canada, and Russia will also have non-UNRRA relief expenses in foreign countries. See Report of the Director-General to the Second Session of the Council, September 1944, pp. 10-11.

¹⁷ The ten Latin American countries are Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Paraguay. According to UNRRA press release No. 173, Mexico's appropriation for its operating contribution had been effected by July 24, 1945.

¹⁸ Iceland made some kind of a record when it gave over its administrative contribution and part of its operating sum less than six weeks after the inauguration of UNRRA on November 9, 1943. This was possible because the Icelandic Parliament approved the country's participation in UNRRA on October 19, before the Agreement was signed. Early action is apparently possible.

culty in fixing 1 per cent of their national income, but Liberia, South Africa, and Iceland have made contributions that neglected any stated reference to national income. Brazil, Australia, New Zealand, and other countries have claimed that they used national income as their contribution basis, but there are no independent and responsible means of verification. The majority of the thirty-one uninvaded countries make no mention at all of the basis upon which they have made contributions or their legislatures have been asked to make appropriations. In any case, there are no objective means of verification available to UNRRA. Were there not a large discretionary element to the size of contributions, the national income basis might therefore prove to be largely unsuitable.

So far only four countries,—Uruguay, Chile, Paraguay, and Ecuador,—have acknowledged that they are taking or intend to take advantage of the clause permitting less than 1 per cent of national income on the grounds of "peculiar situations." The Government of Uruguay has transmitted a bill to its General Assembly stating that such a contribution was excessive. However, the Director-General of UNRRA in reply has urged that Uruguay keep open the possibility of further contributions. Chile is also reported to have requested of its legislature only 66 million pesos, instead of the 200 million pesos estimated as 1 per cent of its national income, because of the damage still remaining from its earthquake of 1939. No information is available on the other two countries, though in common with many other areas they are in the midst of a critical inflation.

Even on the basis of partial experience, the hope of the planners of UNRRA that it would not be necessary to go through the mill of national constitutional processes periodically has apparently failed. It has so far failed in the cases of the United States, Iceland, Liberia, the Union of South Africa, and a few Latin American countries. Though UNRRA will presumably go to these countries at times when it requires additional funds, South Africa has taken this initiative away from UNRRA by stating that the extent of its contribution will be determined each year by parliamentary appropriation. It is not out of the question that other governments, still to be heard from, may also require the periodic submission of appropriation bills for UNRRA to their national legislatures.

No provision was made in the Financial Plan as to the manner in which governments would make local currency portions of their operating contributions available to UNRRA. The experience so far has been that the contributing governments open a line of credit for UNRRA that is controlled by national executive authorities. After this is done UNRRA enters into negotiations with the government as to the supplies and services to be bought

¹⁹ Uruguay is discussed in UNRRA's official reports, Chile in the *Christian Science Monitor*, December 16, 1944, p. 5, and Paraguay and Ecuador in the *New York Times*, January 7, 1945, p. 12. This latter dispatch claims that Brazil's contribution and Colombia's planned contribution surpass the 1 per cent formula.

with the funds. Not having a deposit in its own name prevents UNRRA from engaging in independent procurement of supplies, though this is also prevented more directly by the wartime supply controls of the national governments. In the United States, for instance, UNRRA's requirements for supplies have to wend their way through the established war supply allocation machinery, while in countries having less complicated allocation machinery the specific control of goods granted to UNRRA is no less close. The control of the local currency funds of UNRRA reënforces control on the supply side and assures that UNRRA will not obtain any national supplies other than those specifically allotted. National contributions therefore really amount to payments in kind.

The date when member countries turn over their supplies to UNRRA is presumably to be decided by negotiation, though in the cases of Brazil, Venezuela, Bolivia, Peru, Panama, Mexico, Dominican Republic, and Costa Rica an artificial provision has been adopted making the local and foreign currency contributions available in three annual installments. Though designed to prevent an excessive drain at any one time, this provision is obviously in conflict with the interest of UNRRA to have the supplies "when needed for the purposes of the Administration." Only one country so far,—Panama,—has elected to make its contribution entirely in a foreign currency (dollars).

Only one country, the United States, has specified by its legislation the kinds of commodities that may be turned over to UNRRA. This the United States has done with respect to a minor portion of its direct appropriation of 450 million dollars, where not over 21.7 million dollars is required to be spent for stockpiled domestic raw wool and 43.2 million dollars for domestic cotton.²⁰ Though these sums are relatively small, the universalization of their principle would tend to narrow, by legislative enactment, UNRRA's range of procurement opportunities and even in some cases to lead to the dumping of unwanted surpluses. Such limitations would be more dangerous in the United States, where the range of procurement opportunities is relatively wide, than in the thinly-supplied countries which have specific procurement controls anyway.

The experience of UNRRA in spending has been very scanty so far. The actual volume of supplies bought has been very small in amount. The Director-General has indicated his intention to draw upon military and lend-lease stocks, as well as upon the current stream of production. Meanwhile, some countries have indicated that they will not require UNRRA's assistance in the procurement of supplies. These include countries having relatively large foreign exchange resources, such as France, Belgium, Nether-

²⁰ Public Law 382, Section 201-78th Congress, Title II.

²⁰ Of over a million long tons of relief supplies shipped or slated for shipment by June 30, 1945, amounting to about a quarter of a billion dollars, 550,000 tons have been bought from Allied military authorities. See *Journal of Commerce*, May 28, 1945, p. 16.

lands,22 Luxembourg, and Norway, though some small supplemental assistance may be given to some of them according to a policy adopted by the Central Committee on February 26, 1945. These countries, or most of them, are expected to call upon UNRRA largely for assistance in the repatriation of displaced people. Other countries, as Poland, Greece, Yugoslavia, and Czechoslovakia, are looking to UNRRA for direct supply aid, in the cases of Poland and Czechoslovakia with no intervening period of civilian supply responsibility by the military. UNRRA's expense for the financing of supplies for Europe will therefore be confined largely to the financiallyweak Eastern areas. As for the Far East, China has already announced its intention to call for direct supply aid.23 It is expected that most of the occupied Dutch, French, and British territories in the Far East will do likewise. It may be that a considerable portion of UNRRA's total supply responsibility, and the expenses involved in meeting it, will therefore be concentrated in the Far East.

III

Only tentative conclusions can be drawn from the financial experience of UNRRA and applied to specialized international organizations as a whole. This not only because UNRRA still has to demonstrate its nature in action To be sure, every international orbut also because of its unique features. ganization will display a certain degree of uniqueness limiting the transferability of its experience to other agencies. But so far as the contribution of financial resources is concerned, the character of UNRRA is unusually distinc-The basic reason for this lies in the fact that, in contrast to other organizations which will be set up to help all their member nations directly, the majority of UNRRA's membership is expected to help not itself—not directly and immediately anyway—but only a minority number of member In other words, in contrast to more broadly selfish international organizations, UNRRA does not offer most of its members an equivalence of gain with sacrifice. The result is that UNRRA cannot use the threat of a loss of gain, or of privilege, in influencing the observance of financial obligations, there not being any apparent privileges for thirty-one countries. Where the sacrifice is asked on the basis of a slim margin of economic safety and where international responsibilities are primitively developed, which is true at present for many nations in all parts of the world, the contribution of funds cannot be expected to be made enthusiastically and promptly. has been true of the experience of UNRRA.

²² The inclusion of the Netherlands in this group is somewhat doubtful because of wide-spread flooding and military damage. See "The Second Session of the Council of UNRRA," by Edward G. Miller, Jr., in *The Department of State Bulletin*, October 29, 1944, p. 503.

The official Chinese delegate to the UNRRA Council has tentatively announced that minimum Chinese relief and rehabilitation needs would amount to \$3,439,000,000 for the first year after liberation, of which UNRRA would be requested to meet about 1.3 million dollars, or 37 per cent. See the *Monthly Review of UNRRA*, October 1944, p. 7.

The disappointing financial experience of UNRRA reveals the various aspects in which, by comparison, other international organizations will be more favorably situated. For one thing, in contrast to UNRRA, other agencies will be able to stipulate in advance of signature of the basic document the definite "cost" of membership and will be able to require some initial financial contribution as a condition of membership. though the relief organization was not able to do so, other agencies can set up a definite schedule for the meeting of financial commitments. Thirdly, other institutions will undoubtedly be in a position to require the submission of the information used as a contribution basis, thereby making possible independent verification. And lastly, other agencies will to some extent be able to "fine" their delinquent members; the "fine" may be a money payment. though this would be unusual, a suspension of the rights of participation,24 or even, in serious cases, expulsion from membership. To be sure, in an unrepentant nationalistic world where the authority of international agencies. such as it is, is unmistakably derived from national governments, the frequent imposition of "fines" is difficult to imagine.

As they appear in draft form, the proposed International Monetary Fund and International Bank for Reconstruction and Development fully incorporate the above favorable comparisons with UNRRA. However, UNRRA's experience casts a light on three main dangers to the successful financial operation of these organizations, as follows:

1. It was noted before that some national governments have placed specific conditions of time and manner in UNRRA's use of their appropriated funds. The drafts of the Fund and the Bank narrow, though do not entirely eliminate, the opportunity for national governments to insinuate separate conditions on the use of their contributed financial resources. If these conditions should seem unduly restrictive, the Fund and the Bank authorities would face the dilemma of either rejecting the membership of the particular countries, which it must always be wary of doing especially with respect to the more powerful countries, or else of accepting membership along with the restrictive conditions, thereby taking upon itself burdensome administrative difficulties in the way of successful operations. There is no getting around this dilemma as long as the financial resources of international institutions depend upon the action of individual governments and, in particular, as long as national legislative bodies maintain the full strength of their special prejudices and traditions of purse string control in their consideration of contributions to international organizations.

²⁴ The charter of the United Nations suspends a delinquent country's voting privileges in the General Assembly. Article 19 reads: "A member which is in arrears in the payments of its financial contributions to the organization shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member."

- 2. With respect to the International Bank, 80 per cent of a member country's quota subscription would not be called upon except to make good defaults of loans guaranteed by the Bank, or the Bank's own defaulted loans. In such cases, the Bank would call up proportionate amounts from all member countries of the particular currency required to discharge the Bank's obligations, or of gold or dollars. Failure to meet such calls will by no means be out of the question in two contingencies: a) where a member country wished to use its limited dollar and gold resources for national purposes (such as during a depression) more than it feared the loss of its privileges in the Bank; and b) where national legislatures would require their specific approval to meet such calls, a requirement not ruled out by the Bank draft. In this latter case instances of late payment or of failure to make payment Though the Bank would make additional calls upon could easily arise. other member countries to meet its obligations in full, the deterioration of the quality of the Bank's guarantee would not be unexpected in the event of the spread of the habit of the non-fulfillment of calls.
- 3. In approving UNRRA, the United States Congress stipulated that "No amendment . . . involving any new obligation for the United States shall be binding upon the United States without approval by joint resolution of Congress." 25 The legislation authorizing United States participation in the Bretton Woods institutions, although drawn up by executive officials, accepts this point of view and specifically states that no loan to the Fund or Bank, over the amount of the regular subscription, can be made except upon authorization by Congress.25 The political necessity for this stipulation is understandable but its integration with a successfully operating Fund, especially at a time of dollar shortage, is less clear. At such a time, in order to allay a wave of exchange restrictions on dollar transactions by member countries, the Fund would seek to borrow extra-quota dollar sums from the But the United States Congress, as long as its specific approval is required, may not act with sufficient speed or perhaps not at all for political reasons unrelated to the matter at hand. In any case, at a time of dollar shortage, considerable international monetary responsibility would pass from the executive hands of Fund officials to the United States Con-The result might be the failure to get rid of that government control over foreign exchange transactions which is among the leading aims of the Fund.

These brief considerations raise two main problems. One problem refers to the ways and means by which national constitutional machinery can be adapted and, perhaps, streamlined to the requirements of the successful performance of international institutions, in particular to the matter of promptness in making approval and in providing appropriations, and also in developing restraint in attaching special conditions to national participation

²⁵ Public Law 267, Section 5-78th Congress.

[&]quot;Public Law 171, Section 5e-79th Congress.

in membership. The second problem refers to the development, from the primitive state existing today, of an articulate world-wide public opinion that could be relied on to bring pressure against the obstacles, national and international, and financial and otherwise, which stand in the way of the successful operation of international institutional life. Lacking the absolute sanction of force, specialized international agencies must lean heavily on the imperfect sanction of public opinion. The development of international organization cannot go far without the parallel growth of international public opinion.

The Economic and Social Council of the United Nations can contribute to For one thing it can try to establish a the solution of both these problems. coördinated set of rules of liaison and integration of existing and contemplated international agencies with national governments. This would help national governments to organize their relations with international agencies with regard to requests for funds and other matters. The Council may also recommend to national governments ways of legislative and executive adjustment to the requirements of international institutions. For another thing, as to the development of a public opinion watchful of the fate of international bodies, the Economic and Social Council may require that reports made to it by such bodies give prominent display to the honoring of financial commitments by member countries. Otherwise, and not without regard to the experience of UNRRA, the international agency may try to hide judiciously the failure to make contributions for fear of wounding "sensibilities" and thus jeopardizing payments at a later date. The Council, on the other hand, may set up a platform upon which the financially recalcitrant countries would be displayed before the world-wide public for the very purpose of embarrassment.

INTERNATIONAL AGENCIES IN THE WESTERN HEMISPHERE

By RUTH D. MASTERS

Division of International Law, Carnegie Endowment for International Peace

In the course of the last fifty-five years the countries of the Western Hemisphere have developed effective instruments and procedures for cooperative action in many fields of common interest. There is, in the first place, the official governmental machinery for hemispheric coöperation—the Inter-American system—which operates through thirty permanent agencies.¹ There are, furthermore, some thirty-nine semi-official and private agencies (Inter-American, Caribbean, Latin American, and South American regional, as well as bipartite) which have been established in response to recommendations of general or special Inter-American conferences, under the auspices of the government of some one American state, or by private initiative. And, finally, there are seventeen official agencies created by joint action of two states to deal with problems of special interest to them. In all, there are now eighty-six international agencies in the Americas, over half of them governmental.² An adequate presentation of this very extensive machinery for collaboration would exceed the scope of an article. We shall only attempt here to show the variety of common interests now served by international agencies in the Western Hemisphere. Of necessity, the description of individual agencies must be rather sketchy but detailed information concerning the history, purposes, internal administration, and accomplishments of all agencies here mentioned may be found in a volume which has just been published by the Carnegie Endowment for International Peace.3

Since most of the agencies are either part of, or owe their existence indirectly to, the Inter-American system it may be useful to begin with a few remarks concerning the nature of this system. It embraces all of the independent states of the Western Hemisphere—except Canada—and constitutes the only regional organization not limited to a single objective

¹ Four codification agencies—generally counted in—have not completed their membership nor begun working; if these are excluded, the total number of agencies would amount to eighty-two.

² Eleven of these are war-time bodies and hence of an emergency nature, but several will probably be continued after the war in altered form.

² Handbook of International Organizations in the Americas, prepared by Ruth D. Masters and other staff members of the Division of International Law, Washington, 1945.

Although not an official member, Canada has participated in a number of special Inter-American conferences and is a member of several Inter-American agencies, both official and private. Resolution XXII of the Mexico City Conference expresses the wish of the conference "that the collaboration of Canada with the Pan American system shall become ever closer."

(mutual defense, unification of customs, unity of railway freight traffic, etc.) but covering any matter deemed to be of common concern to the participat-Resolution IX of the recent Inter-American Conference on Problems of War and Peace which convened in Mexico City, February 21-March 8, 1945, reiterates that "the Inter-American system and the principles, instruments, agencies, and procedures that give it substance, constitute the living manifestation of the determination of the sovereign American Republics to act together for the fulfillment of their common purposes in the maintenance of peace and security and in the promotion of the well-being of their peoples." 5 It is not, as yet, an integrated organization based upon a single charter or treaty and operating through one central body, such as, for example, the League of Nations. The Inter-American system consists, rather, of 1) a body of rules, principles and modes of action which are expressed in numerous declarations, resolutions, agreements, and conventions adopted by the American governments, and 2) a variety of common agencies created piecemeal in response to specific needs, the principal one being the Pan American Union. The basis on which the system may be said to rest are the International Conferences of American States which are, in the future, to be held at four year intervals, and of which there have been eight since 1889. Although not included in this periodical series, the Mexico City Conference of February-March, 1945, as well as the Inter-American Conference for the Maintenance of Peace (Buenos Aires, 1936), rank in importance with the International Conferences of American States, as do also, within their restricted sphere of action, the Meetings of Consultation of the Ministers of Foreign Affairs; there have been three of these since the out-Resolution IX of the Mexico City Conference probreak of war in 1939. vides that henceforth they will be held annually.

This conference undertook to reorganize, consolidate, and strengthen the Inter-American system. Of special importance to the future functioning of Inter-American agencies is the provision of Resolution IX which charges the Governing Board of the Pan American Union with the duty of preparing a draft charter which will be considered by the Ninth International Conference of American States (scheduled to be held in Bogotá in 1946). Inter alia this charter is to contain provisions "for the strengthening of the Inter-American system on the bases of this resolution and by the creation of new agencies or the elimination or adaptation of existing agencies, specifying and coördinating their functions as among themselves and with the world organization." It is expected that the new charter will provide for the coördination of existing permanent Inter-American agencies under the Governing Board of the Pan American Union, at least to the extent that these agencies will be charged with keeping the Board informed of their activities at regular intervals. The Pan American Union would thus develop into the central coör-

⁵ Pan American Union, Final Act of the Inter-American Conference on Problems of War and Peace, Mexico City, February-March, 1945, Washington, 1945.

dinating organ of the system and much overlapping of functions and duplication of efforts would be eliminated.

THE PAN AMERICAN UNION

The Pan American Union was established in 1890 as The Commercial Bureau of the American Republics, pursuant to a resolution of the First International Conference of American States, held in Washington in 1889-90.6 The resolution provides that "there shall be formed by the countries represented in this Conference an association under the title of 'The International Union of American Republics' for the prompt collection and distribution of commercial information," which shall have as its agency a bureau "to be charged with the care of all translations and publications and with all correspondence pertaining to the International Union." In the course of time, the International Union developed into an association dealing not only with commercial intelligence, but with any matter its members hold to be of common interest.8 The activities of the Pan American Union have likewise expanded, keeping step with the increased objectives of the Union of American States.9 It acts as the secretariat of the conferences, in which capacity it prepares the program and regulations, keeps the records, and assists in carrying out the resolutions of the conferences. It performs like functions for the Meetings of Ministers of Foreign Affairs and, upon request, will assist also in the preparation of special and technical Inter-American conferences, official as well as private. Duties imposed upon the Pan American Union by the International Conferences of American States and the Meetings of Ministers of Foreign Affairs, as well as by other conferences of plenipotentiaries of the American states, are mandatory. Resolutions requesting that the Pan American Union perform specified tasks which may be passed by special or technical conferences, while not mandatory, are carried into effect whenever this is possible. Acting upon resolutions of general and special Inter-American conferences, the Pan American Union has been instrumental in setting up some eight permanent Inter-American agencies, and has assumed the duties of providing a permanent office or secretariat for several permanent committees and commissions.

The name of the Bureau was changed twice: by the Second International Conference of American States, Mexico City, 1901–2, to "International Bureau of the American Republics," and by the Fourth Conference, Buenos Aires, 1910, to "Pan American Union."

Text in The International Conferences of American States, 1889-1928, New York, 1931, p. 36, to be cited henceforth as Am. Int. Confs.

⁸ Despite this transformation of the original Union of American Republics no clear definition of its objectives and functions has been given either in resolutions of the International Conferences of American States or in the 1928 Convention on the Pan American Union (which has not yet come into force).

This term was first used in the 1928 convention and is now commonly in use. The "Union of American States" should be distinguished from the "Pan American Union." Despite its name the latter is not itself a *union* but rather the *principal agency* of a Union, viz., the Union of American States.

The extent and variety of activities now being carried on by the Pan American Union may be judged by the number of administrative divisions through which its work is done. There are sixteen such divisions, including the following: foreign trade, statistics, economics, intellectual coöperation, music, juridical matters, agricultural coöperation, travel, labor and social information, and the Columbus Memorial Library. The personnel, which numbered five in 1890, now numbers 145. The Pan American Union is a center of information on all matters pertaining to the Americas and its library contains the largest collection of books on Latin America in the world. It issues numerous publications, the most important being the monthly Bulletin of the Pan American Union which appears in English, Portuguese, and Spanish.

ECONOMIC COOPERATION

Measures for economic cooperation have figured prominently on the agenda of most Inter-American conferences, beginning with the First Conference which was called by the Government of the United States primarily for the purpose of improving trade relations between the countries of North and South America. With the exception of the Inter-American High Commission, however,—a wartime agency established in 1915 and now defunct—and the Inter-American Trade-Mark Bureau, set up in 1917, the Pan American Union remained, until well into the 1930's, the only Inter-American agency dealing with economic matters. In the last decade, however, some eighteen Inter-American agencies, both official and private, dealing with commercial, industrial, and agricultural problems have been set up, not counting eleven bipartite agencies.

The Inter-American Trade-Mark Bureau is an official agency which functions in Havana under the supervision of the Cuban Government and which serves all American states which have ratified one of the two Inter-American trade-mark conventions (1910 or 1923), or the 1929 Protocol on the Inter-American Registration of Trade Marks.¹⁰ These agreements provide for a simplified procedure whereby industrial property rights acquired in any one of the signatory states may be placed under the protection of the laws of all the other signatory states, the Bureau handling the necessary registration of marks.

Projects for a system of Inter-American commercial arbitration have been discussed at many Inter-American conferences. Although it was generally recognized that trade relations were much improved where there existed a habit and effective machinery for commercial arbitration, so that disputes could be solved within the commercial community itself without having to go to the courts, agreement was made difficult because of differences in the laws

¹⁰ Text in Am. Int. Confs., pp. 201, 251, and 476. The Protocol has recently been denounced by several states and it is expected that the Bureau will cease functioning the end of this year.

and trade practices of the several American states. However, in 1934 an Inter-American Commercial Arbitration Commission was established. is a private agency organized jointly by the American Arbitration Association and the Council on Inter-American Relations, in response to a resolution of the Seventh International Conference of American States (Montevideo, The Commission, which has members in all twenty-one American republics, has drafted standard arbitration rules and a standard arbitration clause for use in commercial contracts. Its local committees administer Inter-American arbitration tribunals in their respective countries.11 other important private agency for the promotion of Inter-American trade and commerce is the Inter-American Council of Commerce and Production (formerly the Permanent Council of American Associations of Commerce and Production), founded in 1941, for the purpose of representing and developing the economic interests of the American countries and of performing for them functions similar to those of the International Chamber of Commerce.12 The Council now has members in all American countries, including Canada. The formation of an Inter-American Statistical Institute was proposed in 1940 by the American members of the International Institute of Statistics at The Hague when the latter ceased functioning after the Netherlands had been occupied by Germany. The new agency is a semi-official organization with members from all the American states, including Canada. Its purposes include the advancement of the science and administration of statistics, and stimulation of professional collaboration among the statisticians of the Western Hemisphere.

The outbreak of war in Europe in 1939 caused serious dislocations in the economies of many Latin American countries which were dependent on their trade with Continental Europe. To assist in the planning of measures that would offset these dislocations—such as, promotion of new industries and improvement of Inter-American trade relations—the First Meeting of Ministers of Foreign Affairs (Panama, 1939) created the Inter-American Financial and Economic Advisory Committee and gave it broad powers to

¹¹ The commercial arbitration system of the Western Hemisphere was completed with the establishment in 1943 of a *Canadian-American Commercial Arbitration Commission*, composed of two national sections elected by the American Arbitration Commission and the Canadian Chamber of Commerce, respectively.

¹³ A similar organization is the Canada-United States Committee which is maintained jointly by the Canadian and United States chambers of commerce. Several other private organizations devoted to the promotion of economic cooperation (giving the term its broadest connotation) should be mentioned. Of these, the South American Union of Engineers' Association, in Montevideo, founded in 1935; the Pan American Institute of Mining Engineering and Geology, in Santiago, and the South American Petroleum Institute, in Montevideo (the last two founded in 1942), maintain very close relations with each other. Others are: the Confederation of Latin American Workers, in Mexico City, created in 1938, and the Pan American Union of Technical Experts in the Field of Economic Sciences, in Buenos Aires, the Inter-American Hotel Association, with offices in New York City, and the Inter-American Committee for the Dairy Industries, in Washington, all founded in 1941.

promote economic cooperation among the American republics. Additional duties were imposed upon the Committee by the Second and Third Meetings of Ministers of Foreign Affairs (Havana, 1940, and Rio de Janeiro, 1942), the latter charging it in particular with the task of planning measures to mobilize the resources of the American continent for the common war effort. Mexico City conference provided that this Committee, which was created as an emergency body, was to be replaced by a permanent Inter-American Economic and Social Council, operating under the Governing Board of the Pan American Union. The Council has been provisionally formed by the Board and will be definitively established by the Ninth International Conference of American States.13 Its primary function will be "to serve as the coördinating agency for all official Inter-American economic and social activities" (Resolution IX, Mexico City Conference); it is to be composed of one representative from each of the twenty-one American republics and as many technical advisers as the several governments wish to designate.14 The Secretary-General of the Council will be appointed by the Governing Board.15

The Inter-American Financial and Economic Advisory Committee was instrumental in the establishment of two other important official agencies, the Inter-American Development Commission and the Inter-American Coffee Board. The Inter-American Development Commission, composed of five members appointed by the Committee (one each from Chile, Costa Rica, and Brazil, and two from the United States), began functioning in 1940. It is charged with preparing a program for the development of the natural resources of the American continent and for the promotion of new lines of Latin American production for which a market can be found in this hemisphere. It operates through national Commissions of Inter-American Development established in each of the twenty-one American republics. At the first conference of these national commissions (New York, 1944) a resolution was passed recommending the formation of a Canadian Commission. This proposal has now been approved by all of the American governments and a Canadian National Commission is in process of formation.¹⁶ The

¹² The Board announced formation of the Council on August 29, 1945.

¹⁴ The Inter-American Financial and Economic Advisory Committee had been composed likewise of twenty-one members appointed by the American governments. It maintained offices in the Pan American Union but had its own budget (since 1943).

¹⁵ An unusual type of agency is the *Permanent Joint Commission, Chile and Ecuador* which was established by the Treaty of Commerce of April 7, 1936, for the purpose of administering the treaty and of promoting better trade relations between Chile and Ecuador.

The very close political and economic ties between Canada and the United States have facilitated the solution of a number of common problems through joint action by permanent commissions entrusted with considerable authority over a given situation. Thus, common interests in the utilization of boundary waters are safeguarded by the International Joint Commission, United States and Canada established by the treaty of January 11, 1909 (36 Stat. Le 2448), and joint measures for the preservation of the important west coast halibut and Pacific salmon fisheries are put into effect by the International Fisheries Commission,

Inter-American Coffee Board was created by the Inter-American Coffee Agreement of November 28, 1940,¹⁷ the first international treaty providing for regulation of coffee exports. All of the fourteen Latin American coffee producing countries, as well as the United States ¹⁸ have ratified the Agreement, under which the United States market is allocated on the basis of definite annual quotas for these countries. The Board, on which each of the fifteen signatory states has one representative, keeps the quota schedules flexible and administers the Agreement.¹⁹

The establishment of a center for inter-American collaboration in the field of agriculture was originally recommended by the First Inter-American Conference on Agriculture (Washington, 1930) but did not materialize until twelve years later. The Inter-American Institute of Agricultural Sciences was founded in 1942 and its principal field headquarters in Turrialba, Costa Rica, were inaugurated in March, 1943. The plan for the Institute was drawn up by the Inter-American Committee on Tropical Agriculture, appointed by the Governing Board of the Pan American Union in fulfillment of a resolution of the Eighth International Scientific Congress (Washington, 1940).²⁰ The Institute, whose purpose is to advance the development of agricultural sciences in the Americas through research, teaching, and field work, is governed by the convention of January 14, 1944, which came into effect on November 30, 1944.²¹

United States and Canada, and the International Pacific Salmon Fisheries Commission, created, respectively, by the conventions of March 2, 1923 (43 Stat. L. 1841) and May 26, 1930 (50 Stat. L. 1355). Although not charged with any economic functions, the International Boundary Commission, United States, Alaska, and Canada, which was put on a permanent basis by the treaty of February 24, 1925 (44 Stat. L. 2101), may be mentioned here to complete the list of joint United States-Canadian peacetime agencies. A commission combining the task of preserving the boundary line with large powers over the joint utilization of boundary waters, is the International Boundary and Water Commission, United States and Mexico, originally the International Boundary Commission, United States and Mexico, established by the treaty of March 1, 1889 (26 Stat. L. 1512).

- 17 United States Treaty Series, No. 970.
- ¹⁸ The United States consumes one half of the coffee entering world trade and the fourteen Latin American countries account for over 85 per cent of world coffee production.
- ¹⁰ The coffee producers of some eight Latin American countries have set up a private agency, the Pan American Coffee Bureau, established in New York in 1936, which coördinates their efforts to increase coffee consumption and to reduce shipping and distributing costs of coffee exports.
- ²⁰ Pursuant to a resolution of the same Congress, the Pan American Union established a Pan American Soil Conservation Commission which, though still in existence, has not functioned for some time. The same Congress was also instrumental in the foundation of a private organization, the American Society of Agricultural Sciences, whose purposes are similar to those of the Inter-American Institute of Agricultural Sciences. The Society has offices in the Pan American Union.
- ²¹ United States, Treaty Series, No. 987. A joint commission charged with facilitating cooperation of the member governments in the promotion of agriculture and rural welfare is the Mexican-United States Agricultural Commission, established in 1942. Two wartime

TRANSPORTATION AND COMMUNICATIONS

The project of a Pan American Railway linking the countries of North and South America has been endorsed by each of the eight International Con-The First Conference appointed a Commission ferences of American States. of engineers to survey the route which the railway should take. mission reported that 5,456 miles of line needed to be built and recommended creation of a permanent agency to assist in carrying the project into effect. The Second Conference accordingly established a Pan American Railway Committee which has been functioning since 1902, its membership varying from five to seven. The Pan American Railway Committee has been engaged primarily in the collection and dissemination of information and no concerted plan for constructing the Pan American Railway has actually been However, in some countries existing lines have been put into effect. lengthened, usually following more or less the route proposed by the Committee. By 1923 about 70 percent of the railway had been built but since then little progress has been made.22

The railroads in South America have been built largely to serve local needs and are connected with the lines in neighboring countries at very few points.²³ There is a great variety in gauge, construction, and equipment not only as between the railroads of different countries, but even between those of a single country. To aid the railroads in improving and unifying their equipment a Permanent South American Railway Congress Association was founded in 1910, on the initiative of the Argentine Government. The Association, which has permanent offices in Buenos Aires and includes in its membership both governments and private railway companies, was formed

agencies should also be mentioned here: The Brazilian-American Food Production Commission, established in Rio de Janeiro in 1942, deals with the promotion of food production in the northern and northeastern provinces of Brazil where several United States military bases are located and The Standing Agricultural Committee of Canada and the United States, which has national sections in Ottawa and Washington, was established in 1943 to keep agricultural and food production and distribution in the two countries under continuing review so that they could be fitted into the wartime food and agriculture plans of Canada and the United States.

The Joint Railway Commission, Bolivia and Argentina, established in 1937, and the Joint Railway Commission, Bolivia and Brazil, established in 1938, are agencies of a type probably not found elsewhere. They are official bodies, composed of an equal number of engineers appointed by the participating governments, and employing a large staff, charged by the two governments with constructing railroads within the territory of Bolivia which will connect the Bolivian railways with the lines in Argentina and Brazil, respectively. These two countries have obligated themselves by treaty to advance the cost of construction at a low rate of interest, to be repaid in part by oil deliveries from the eastern provinces of Bolivia which will be made accessible by the new railroads.

²³ Railroad connections now exist between Argentina, Brazil, and Uruguay, Argentina and Chile, Argentina and Bolivia, Bolivia and Chile, Argentina and Paraguay, and Bolivia and Peru; the last two by utilizing train ferries.

on the pattern of the International Railway Congress Association in Brussels and serves its members in a similar capacity. Four Congresses have been held at which the members discuss railway problems of a technical nature. The Association now has members in North America also and its name has accordingly been changed to Pan American Railway Congress: Permanent International Association.

The growth of Inter-American air traffic led to the creation by the First Inter-American Technical Aviation Conference, Lima, 1937, of a Permanent American Aeronautical Commission which was to be charged with the unification and codification of international public and private air law in the Americas. The Commission was to have met after at least seven National Committees for the Codification of Air Law had been established, but, although there are now fifteen such committees in existence, the Commission has not yet been constituted.²⁴

A plan to build a highway connecting all of the American republics was first proposed by the Fifth International Conference of American States (Santiago, 1923). The Pan American Highway is now open to traffic in all weather over three quarters of its entire length. Part of the credit for this achievement must go to the work done by the Pan American Highway Confederation (founded in 1924) in stimulating interest in highways and promoting relations between highway engineers of the several American states. The Confederation is a semi-official body with headquarters in the Pan American Union whose members are National Federations for Highway Education. The Confederation is closely connected with the Pan American Highway Finance Committee, an official agency established by the Convention on the Pan American Highway (adopted at the Inter-American Conference for the Maintenance of Peace, Buenos Aires, 1936) 25 for the purpose of devising means to speed completion of the Pan American Highway through coöperative action of the several American countries. federation also acts as a temporary secretariat for the periodical Pan American Highway Congresses which have been held since 1925.26

In their postal relations the American states have established a degree of unification not equalled elsewhere. Taking advantage of the authorization granted members of the Universal Postal Union (to which all the American

²⁴ A private organization uniting national associations of private fliers and private aero clubs, with temporary headquarters in Washington, was founded in 1937. The *Inter-American Escadrille*, whose primary purpose is to develop civilian aviation over the "Inter-American skyway," has concentrated, during the war, on a program of aeronautical education and hemisphere-mindedness of the youth of America by introducing model plane building in the schools and holding model plane contests.

²⁸ Text in The International Conferences of American States, First Supplement, 1933-40, Washington, 1940, cited henceforth as Am. Int. Confs., First Supp., p. 201.

²⁶ In 1941 an *Inter-American Federation of Automobile Clubs* was established in Buenos Aires, pursuant to resolutions of the Fourth Pan American Highway Congress and the Second Inter-American Travel Congress which met in that year in Mexico City.

states belong) to form restricted unions for the purpose of improving postal relations, the American states have united in the Postal Union of the Americas and Spain, successor to the earlier South American and Pan American Postal Unions.²⁷ The principal features of this regional union are: 1) freedom from transit charges on mail originating in a member country; 2) domestic postage rates for correspondence within the Union; 3) generous franking privileges. including a blanket grant to official correspondence of the central governments of member countries which enjoy the franking privilege under their domestic laws; 4) absolute equality of votes, each member having one vote; and 5) unity of action of members at Universal Postal congresses. Union maintains an International Office in Montevideo (founded in 1911) which performs functions similar to those of the Bureau of the Universal Postal Union, and an International Transfer Office in Panama. an agency created to relieve the Postal Administration of Panama of the burden of handling the mails passing in transit through the Isthmus. Montevideo Office is placed under the supervision of the Administration of Posts of Uruguay while the Panama Office is administered jointly by the Postal Administration of Panama and the Montevideo Office. Canada and Spain, as well as all of the twenty-one American republics are members of the Union.

In the field of radio communications the American states have also united in a regional arrangement within a larger world union. The international telecommunications conventions permit regional agreements for the distribution of wave bands among the services of participating governments, provided these remain within the limits of the convention and regulations and do not interfere with the service of other countries. Attempts to conclude Inter-American regional radio agreements began as early as 1924 and finally led to the signing in Havana, on December 13, 1937, of an Inter-American Radiocommunications Convention 28 with two annexes, and an Inter-American Arrangement concerning Radiocommunications.²⁹ The former provides that the contracting parties shall meet periodically in conferences for the purpose of resolving by common agreement problems arising in the field of radio communications on the American continent, and establishes an Inter-American Radio Office as the consultative and informational agency of the signatory governments. The Office has its seat in Havana and is placed under the auspices of the Government of Cuba. The majority of the American states, including Canada, have signed the Convention and Arrangement. 30

²⁷ The South American Postal Union was founded in 1911 and superseded in 1921 by the Pan American Postal Union.

^{28 53} Stat. L. 1576.

^{29 54} Stat. L. 2514.

²⁰ A North American Regional Broadcasting Agreement came into force at the same time as the Havana Convention and Arrangement, vis., on March 29, 1941. There are also in force a Central, and a South American, Regional Radio Agreement.

PUBLIC HEALTH AND SOCIAL WELFARE

The American republics were the first to establish a joint agency to facilitate cooperation among their national health departments in combating the spread of epidemic diseases and in improving public health in general. 30a The Pan American Sanitary Bureau, organized in 1902, pursuant to a resolution of the Second International Conference of American States (Mexico City, 1901-2) antedates the International Office of Public Hygiene in Paris by five years and the Health Section of the League of Nations by two An official agency of the twenty-one American republics, the Bureau is governed by the general Inter-American conference, as well as by the regular series of Pan American Sanitary Conferences (inaugurated in 1902) which are directly responsible for regulation of this agency. duties of the Bureau include: 1) collection and transmission of information concerning the outbreak of epidemic diseases; 2) preparation of the agenda of the Pan American Sanitary Conferences and of the Conferences of National Directors of Health (begun in 1926); 3) services as a central consultative agency for the stimulation of national public health authorities towards greater efficiency; and 4) preparation of special studies and investigations and, upon request by a member government, the rendering of aid in combating epidemics or improving sanitary conditions in a member country. The Bureau is located in the Pan American Union but has an independent budget and administrative setup. In accordance with a resolution of the Eighth Pan American Sanitary Conference, Lima, 1927, it acts as the regional branch of the Health Office in Paris. The Bureau also collaborates with other Inter-American agencies (such as the American International Institute for the Protection of Childhood, the Inter-American Indian Institute, etc.) in joint studies or field projects.31

^{30a} The earlier sanitary councils in Constantinople, Tangier, Teheran and Alexandria (established in 1839, 1840, 1867, and 1881, respectively), though international bodies, dealt only with sanitary matters in their particular localities.

¹¹ Pending its formal establishment, the *Inter-American Hospital Association*, a private organization for the promotion of better hospital management in the Americas, functions under the auspices of the Pan American Sanitary Bureau. The Association was set up in 1941, largely on the initiative of the American College of Hospital Administrators and the American Hospital Association.

Since 1922 efforts have been made by the American republics to create a central agency for the promotion of popular education in eugenics, homiculture, and social problems in general. A Central Pan American Bureau of Eugenics and Homiculture was provisionally established by the First Pan American Conference on Eugenics and Homiculture, Havana, 1927. It is now in process of reorganization. A Permanent Secretariat of the Pan American Congress of Physical Education, created in 1943, with headquarters in the Ministry of Public Education, Lima, Peru, acts as the consultative office of the Pan American Congresses of Physical Education. Its Secretary General is the Director of Physical Education and School Hygiene of Peru and its members are the directors of physical education of the twenty-one American republics. Its purpose is to promote collaboration of the governments and educational institutions in the field of physical education. No less than seven private organizations uniting professional men and women in medicine and dentistry are now functioning in the

Several official Inter-American agencies are working for the promotion of The American International Institute for the Protection of social welfare. Childhood was set up in Montevideo in 1927, pursuant to resolutions of the Third and Fourth Pan American Child Congresses. It is a center of social welfare activities, documentation, research, consultation, and propaganda, in regard to all questions connected with child life and child welfare and its quarterly bulletin constitutes a veritable encyclopedia on child welfare. is supported by fifteen American republics. The Inter-American Indian Institute, established by the First Inter-American Conference on Indian Life (Pátzcuaro, Mexico, 1940), and governed by a convention which came into force in 1941, 22 deals with a problem of peculiar importance to the Western Hemisphere. All of the American republics have an Indian population, ranging from a small percentage of the total population (Argentina, United States) to a large majority, as in the Andean countries. In most countries the Indians are the poorest, least educated, and most exploited part of the population, but in all of them the governments are now taking measures to ameliorate the conditions under which their Indian citizens are living. Institute acts as a center of information on Indian affairs and as the standing committee for periodical Inter-American Indian conferences. It is supported by thirteen American governments and has aided in the establishment of National Indian Institutes in several states. Its offices are located in Mexico City.

Collaboration in matters of social security is promoted by the Inter-American Committee on Social Security, an official agency organized at the First Inter-American Conference on Social Security, Santiago, 1942. The Committee maintains very close relations with the International Labor Organization; it has its office in the International Labor Office in Montreal, and its Secretary General is appointed by the Director of that Office. The Committee acts as the permanent commission of periodical Inter-American Conferences on Social Security and promotes coöperation of the social security administrations and institutions of its member governments. The Inter-American Commission of Women, an official agency created by the Sixth International Conference of American States, Havana, 1928, is charged "with the permanent study of all the problems concerning American women and shall act in an advisory capacity," " reporting to the Governing Board of the Pan American Union, before each conference, on the problems concerning women which in its judgment should be considered. The Commission sub-

Americas. These are the Latin American Odontological Federation (Buenos Aires), the Pan American Medical Association (New York City), the Pan American Homeopathic Medical Congress (Philadelphia), the Latin American Union of Societies of Phthisiology (Montevideo), and the Pan American Odontological Association (New York City), founded, respectively, in 1917, 1928, 1930, 1933, and 1937; also the Latin American Society of Plastic Surgery (São Paulo) and the Pan American Congress of Ophthalmology (Chicago), both established in 1940.

23 Am. Int. Confs. First Supp., p. 252.

mitted to the Seventh and Eighth Conferences a formidable array of legal data on the status of women in the Americas, as well as draft treaties on equal rights of women and on the nationality of women. Resolution IX of the Mexico City Conference gives the Commission permanent status and provides that "it be included among the organizations which form the Pan American Union." Resolution XXVIII of the same conference, furthermore, recommended that the American governments agree upon an annual quota, based on their respective populations, which they will contribute to the support of the Commission. The Commission, which is composed of one woman delegate of each of the twenty-one American republics, maintains its headquarters in the Pan American Union.²⁴

CULTURAL RELATIONS

The promotion of cultural relations among the American republics is a major activity of the Pan American Union and is carried on chiefly through its Division of Intellectual Coöperation. Apart from the Pan American Institute of Geography and History, located in Tacubaya, Mexico, no official Inter-American agency for the whole field of cultural relations has yet been set up. The Institute, created in 1930 pursuant to a resolution of the Sixth International Conference of American States, is charged with collecting and disseminating information on geographical and historical questions of mutual interest to the American countries, and is supported by annual quotas paid by the American republics on the basis of their respective populations.

An official agency devoted to the promotion of friendly relations and the strengthening of the cultural and intellectual ties of the participating states has, however, been created by the countries of the Caribbean area. At the First Inter-American Caribbean Meeting (Havana, 1939), which was called by the Cuban Government, a Permanent General Secretariat of the Inter-American Caribbean Union was established. It serves all the countries bordering on the Caribbean Sea and the Gulf of Mexico (including the United States). The Inter-American Caribbean Union itself has not yet been formally established but appears to be at present an inchoate association of these countries. A definite statute for this Union was proposed at the Third Caribbean Meeting (Port-au-Prince, 1941) and will probably be considered by the Fourth which is scheduled to be held after the end of the war. The Secretariat, located in Havana, maintains very close ties with a semi-official

A semi-official agency which should perhaps be included in this section is the Inter-American Congress of Municipalities which has a permanent organ in the Pan American Commission on Intermunicipal Cooperation. The Commission administers a permanent secretariat, located in Havana, and acts as the permanent committee of periodical Congresses of Municipalities. It also collects and distributes data on municipal administration and promotes cooperation among the municipal authorities of the American states for the purpose of improving city management. It was established at the First Pan American Congress of Municipalities, Havana, 1938, and represents municipal authorities in all the American republics.

organization, also located in that city, the Pan American Columbian Society. The President and Secretary of the Society also serve as President and Secretary of the Permanent Secretariat. The Pan American Columbian Society was founded in 1933, principally for the purpose of commemorating the four hundred and fiftieth anniversary of the discovery of America, but its activities have expanded greatly and include, in general, the promotion of cultural and intellectual ties among all of the American republics. The Society, which includes private individuals and organizations, as well as heads of American governments in its membership, now has members in eighteen American countries.²⁵

CODIFICATION AGENCIES

The codification of international law has been of particular interest to the American republics since the beginning of their association. International Conference of American States entrusted the drafting of codes of public and private international law to a committee of five American and two European jurists, to be appointed by the Secretary of State of the United States and the Ministers of the American republics in Washington. The committee was never established. However, the Third Conference created an International Commission of Jurists, composed of delegates appointed by the American governments and this Commission met in Rio de Janeiro in 1912 and approved a project on extradition. Its work was interrupted by the First World War and it was not until fifteen years later that a new agency continued work on codification. This was the International Congress of Jurists which convened in Rio de Janeiro in 1927, pursuant to a resolution of the Fifth Conference. The Congress discussed several projects which had been prepared by a private organization, the American Institute of International Law, 36 and submitted twelve of these, with certain modifications, to the Sixth International Conference of American States. The Conference adopted several of these projects in the form of conventions.

- The Society was instrumental in the establishment, in 1940, of a Corporation of Caribbean Librarians, Archivists, and Curators of Museums which also has its headquarters in Havana. Several other private agencies are functioning in the field of cultural relations, viz., The Inter-American Bibliographical and Library Association (Washington), the Ibero-American Confederation of Catholic Students (Mexico City), the Association of American Writers and Artists (Havana), the International Institute of Ibero-American Literature (Austin, Texas), the Inter-American Institute of Music (Montevideo), the Inter-American Bar Association (Washington), the Inter-American Federation of Societies of Authors and Composers (Havana), and the Inter-American Society of Anthropology and Geography (Los Angeles). These agencies were founded, respectively, in 1930, 1933, 1936, 1938 (both the International Institute of Ibero-American Literature and the Inter-American Institute of Music were established in 1938), 1940, 1941, and 1943.
- The Institute was founded in 1912 and has active members in all of the American republics and corresponding members in several European countries. It is devoted to the study of questions of public and private international law, and the codification of law, and is famous for its "Declaration of the Rights and Duties of Nations," issued January 6, 1916.

The Sixth, Seventh, and Eighth Conferences, as well as the Buenos Aires Conference of 1936, created elaborate and complicated machinery for the codification of public and private international law, establishing the following agencies: Three Permanent Committees in Rio de Janeiro, Montevideo, and Havana, which were to deal, respectively, with the codification of Public International Law, Private International Law, and Comparative Legislation and the Unification of Legislation; a Committee of Experts on the Codification of International Law which was to coordinate the work of these Permanent Committees and prepare draft codes, and an International Conference of American Jurists which was to approve, modify, revise, or reject these draft Provision was also made for the establishment of National Committees on the Codification of International Law and such committees are now in existence in nineteen American republics. Despite this elaborate machinery—or perhaps because of it—very little progress in the work of codification has been made. In 1942 another agency, established originally for a different purpose, the Inter-American Juridical Committee, 37 was charged with developing and coordinating the work of codifying international law. Resolution XXV of the Mexico City Conference provides that, upon approval by the American governments, this Committee is to be made the central agency for the codification of public international law.

Operating outside the machinery outlined above, the Permanent Committee of Jurists on the Unification of the Civil and Commercial Laws of America, with headquarters in Lima, is entrusted with studying the unification of private law. The Committee is composed of three jurists who, because of distance, have not as yet met. They have, however, made a report outlining some of the difficulties of codifying the civil and commercial laws of the American countries and stating the way in which they believe gradual approximation of legal texts may eventually be achieved. Another codification agency is the previously mentioned Permanent American Aeronautical Commission which is to assist in the gradual and progressive unification and codification of international public and private air law.

During the war the entire machinery for codification has been in abeyance.

POLITICAL AND MILITARY DEFENSE

Although machinery for the pacific settlement of international disputes in this hemisphere has existed for over twenty years ³⁸ it was not until the outbreak of the present war that the American governments agreed to establish joint agencies for the coördination of their efforts to defend this continent

³⁷ The Committee is discussed more fully in the section on Political and Military Defense.
³⁸ This machinery originated in the Treaty to Avoid or Prevent Conflicts between the American States of May 3, 1923 (Am. Int. Confs., p. 285) and includes panels of mediators, commissions of inquiry, conciliation commissions, and arbitral tribunals. As these agencies are ad hoc in that they are not engaged in the continuous performance of the duties entrusted to them, they are not discussed in this article.

against political and military aggression from abroad. The First Meeting of Ministers of Foreign Affairs was called by the Government of Panama only five days after the war in Europe began, and met on September 23, 1939. Here for the first time the American governments, acting as a collective unit, presented a joint demand to the belligerents, requesting that "as a matter of continental self-preservation" 39 a safety belt around the American continent be kept free from hostile activities of any non-American state. At this meeting they also agreed to "maintain close contact with a view to making uniform so far as possible, the enforcement of their neutrality and to safeguarding it in defense of their fundamental rights." 40 To study and formulate recommendations concerning the problems of neutrality they furthermore created a joint agency, the Inter-American Neutrality Committee, composed of seven experts in international law, which was to operate for the duration of the war. Recognizing a "profound alteration in the international situation in America" after the entrance into the war of the United States and several Latin American states, the Third Meeting of Ministers of Foreign Affairs, Rio de Janeiro, 1942, continued the Committee in existence under the name of Inter-American Juridical Committee, 11 but charged it primarily with the duty of studying juridical problems arising out of the war The Committee was further requested to coorand post-war problems. dinate the resolutions of the Meetings of Ministers of Foreign Affairs. From 1940 to 1942 the Committee dealt with such topics as internment, treatment to be accorded belligerent submarines and auxiliary vessels of war, postal correspondence and search of mails for contraband, the juridical effect of the security zone established in the Declaration of Panama, etc. After the reorganization in 1942, the Committee prepared a draft project entitled "Reaffirmation of Fundamental Principles of International Law" and formulated "Preliminary Recommendations on Post-War Problems." Committee has also prepared a draft treaty embodying the principles contained in some ten Inter-American Peace instruments (Draft Treaty Coordinating the Principles of the Inter-American Peace Agreements) and an alternative treaty which takes into account proposals and observations pre-

³⁹ Am. Int. Confs., First Supp., p. 335 (Declaration of Panama).

⁴⁰ Same, p. 329 (General Declaration of Neutrality of the American Republics).

⁴¹ Resolution XXVI; text in Pan American Union, Report on the Third Meeting of the Ministers of Foreign Affairs of the American Republics, Rio de Janeiro, January 15–23, 1943, Washington, 1942.

⁴² It was also charged with the duty of developing and coördinating the work of codification of international law. The Mexico City Conference recommended making it the central agency for the codification of international law and also requested it to formulate standards for the determination of war criminals, to prepare an Inter-American Charter of Social Guarantees, to draft a Declaration of the International Rights and Duties of Man, and to prepare a draft of an Inter-American Peace System, for consideration by the Ninth Conference (Resolutions XXV, VI, LVIII, XL, and XXXIX).

sented by various American governments to the Lima conference, as well as the conclusions of the Committee itself (Draft of an Alternative Treaty relating to Peaceful Procedures).⁴² The Committee is composed of seven jurists who, though appointed by their own governments, do not represent those governments but the entire community of American states. It has its seat in Rio de Janeiro and is served by a Secretariat maintained by the Government of Brazil.

When it appeared in the summer of 1940 that Dutch and French colonies in the Western Hemisphere might be transferred to Germany, the Second Meeting of Ministers of Foreign Affairs, Havana, 1940, agreed upon a joint plan of action under which such colonies would be taken over and placed under a regime of provisional administration under the supervision of a joint agency of the American governments. An Emergency Committee was set up at Havana which has now been superseded by the *Inter-American Commission for Territorial Administration*, composed of one representative of each government party to the Convention on the Provisional Administration of European Colonies and Possessions in the Americas.⁴⁴ The Commission has not been called upon to carry out its allotted task.

The Third Meeting of Ministers of Foreign Affairs established an Inter-American agency which has no counterpart elsewhere, the Emergency Advisory Committee for Political Defense in Montevideo. This Committee of seven members 45 is charged with formulating measures to prevent acts of a non-military character, such as espionage, sabotage, and subversive propaganda directed against an American government. It has proposed to the American governments specific measures concerning the control of dangerous aliens, prevention of abuse of citizenship, regulation of entry and exit of persons, and prevention of clandestine crossing of frontiers, as well as measures to combat espionage, sabotage, and subversive propaganda. Committee has on several occasions made public disclosure of totalitarian activities in this hemisphere and has undertaken the arrangement of general and regional meetings of government officials of the several American states charged with the enforcement and administration of laws against subversive Members of the Committee have visited most of the American countries to discuss with law enforcement officials the measures taken in their country for carrying out the recommendations of the Committee and to propose plans for reciprocal assistance among the officials of the several

¹³ Text in Pan American Union, Pan American Postwar Organization: Observations and Suggestions of the Executive Committee on Postwar Problems of the Governing Board of the Pan American Union, Washington, 1944, pp. 49, 63.

[&]quot;United States, Treaty Series, No. 977.

⁴⁵ The Governing Board of the Pan American Union selected seven states and these in turn appointed the members of the Committee. The regulations of the Committee provide specifically that its members shall represent not their own governments but all the governments members of the Pan American Union.

American countries. On two occasions ⁴⁶ the Committee has aided the American governments in the formulation of a common policy towards revolutionary governments suspected of having been brought into power through Axis intervention.

The Third Meeting also created an official Inter-American agency for the coordination of measures of military defense of the hemisphere, the Inter-American Defense Board, composed of military, naval, and air force officers appointed by each of the twenty-one American republics. The Board meets in Washington and is charged with devising plans for the military defense of the Continent. It has passed resolutions dealing in general with air defense, protection of communications, local defense and internal security, protection of merchant marines, and production of strategic materials. Declaring that "the existence of a permanent military agency for the study and solution of problems affecting the Western Hemisphere is indispensable," the Mexico City Conference in its Resolution IV recommended that the American Governments "consider the creation, at the earliest possible time, of a permanent agency formed by the representatives of each of the General Staffs of the American republics, for the purpose of proposing to the said Governments measures for a closer military collaboration among all the Governments and for the defense of the Western Hemisphere," and proposed that until a permanent body is established, the Inter-American Defense Board continue as an agency of Inter-American defense.47

Conclusions

The following observations concerning structural and other characteristics of the agencies described in this brief survey may prove of interest in an evaluation of the machinery for collaboration in this hemisphere.

It should be noted that the joint commission type of international agency is used in the Americas more often and for more varied purposes than elsewhere. Most of the wartime joint boards and commissions are advisory bodies and have no power to act, but there are several commissions with

* Reference is here made to the revolutionary changes in government in Bolivia and Argentina, on December 20, 1943 and March 10, 1944, respectively.

47 In addition to these Inter-American agencies for political and military defense, there have been created a number of bipartite defense agencies, viz., the Joint Brazil-United States Defense Commission in Washington, established August 25, 1942, the Joint Mexican-United States Defense Commission in Washington, created February 27, 1942, and the Permanent Joint Board on Defense, United States and Canada, with national sections in Ottawa and Washington, set up in August, 1940. The United States and Canada have, furthermore, set up the following war agencies: the Joint War Production Committee and the Material Coordinating Committee, both established in Washington, in 1941, and the Joint War Aid Committee in Washington, created in 1943. Two other agencies which have been mentioned previously should be included to complete this list of wartime agencies, viz., The Standing Agricultural Committee of Canada and the United States which has national sections in Washington and Ottawa and was set up in 1943, and the Brazilian-American Food Production Commission in Rio de Janeiro, established in 1942.

considerable authority within their own spheres of activity. For example, commissions which control the use which may be made by the participating states of the water resources along their common boundary; **8 commissions regulating the conditions under which a fishery of joint interest to the participating states may be exploited by their fishermen; **4° and commissions entrusted with the management of an economic enterprise—the building of a railroad—in which both states have an interest. **50 Although bipartite joint commissions were first used extensively by the United States and Canada for the solution of problems of common concern to them, they are also coming into use in Latin America. In fact, some quite unusual types of joint commissions have recently been set up by Latin American states such as commissions whose duty it is to watch over the application of a treaty of commerce and to suggest improvements in the trade regime provided by the treaty **51* and commissions whose task it is to survey and construct a railroad.**

The joint commission type of agency is an official body established by two states and is composed of an equal number of members appointed by each Since no neutral umpire is included in their membership, government. joint commissions can act only if delegates of both governments are in agreement. Usually action is not taken unless a decision has the approval of all commissioners, but in the case of commissions with two or three delegates from each member state decisions are sometimes valid if approved by a majority. As a rule, a joint commission consists of two national sections, each with its own office and permanent staff, and decisions of the commission are usually carried out by the national sections. The full commission meets either at regular intervals or whenever a joint decision needs to be made. One of the Latin American commissions follows a pattern believed to be unique. It is divided into two committees, each located in the capital city of one of the participating states, and these committees are composed of three members—two chosen by the state in which the committee has its seat and one—of its own nationality—by the other state.

A development deserving more attention than it usually receives is the rapid increase, in recent years, of the number of private regional and Inter-American organizations. Whereas in the period from 1889 to 1935 only ten

- ⁴⁸ International Boundary Commission, United States and Mexico; International Joint Commission, United States and Canada.
- ⁴⁹ International Fisheries Commission, United States and Canada; International Pacific Salmon Fisheries Commission.
- 50 Joint Railway Commission, Bolivia and Argentina, and Joint Railway Commission, Bolivia and Brazil.
- ⁵¹ Permanent Joint Commission, Chile and Ecuador. This commission was patterned after the Permanent Joint Commission, Chile and Peru which is no longer in existence.
- ¹⁰ Joint Railway Commission, Bolivia and Argentina, and Joint Railway Commission, Bolivia and Brasil.
- ⁵³ International Joint Commission, United States and Canada; International Pacific Salmon Fisheries Commission.
 - 4 Permanent Joint Commission, Chile and Ecuador.

such organizations were set up, no less than twenty-three have been established in the last ten years. 55 This development reflects a gradual breakdown of the former cultural and economic isolation from one another in which most Latin American countries had lived. Because of geographical obstacles, lack of Inter-American transportation and communications facilities, and traditions of isolation dating back to colonial times, most Latin American countries until recent times had closer trade and cultural relations with Europe (and even with the United States) than with one another. railways of Latin America are still entirely inadequate to serve the needs of vigorous Inter-American trade, 56 but highways are being built at a constantly increasing rate, and aviation and wireless communications have helped to bring the individuals living in Latin American countries into closer contact with one another. The result has been a mushrooming of private societies, associations, and other organizations serving to strengthen the movement towards closer hemispheric collaboration which for so long had been promoted only on the governmental level.

Most of the private organizations have as their primary purpose the arrangement of periodical meetings of their members for mutual acquaintance, discussion of problems in their business or profession, and interchange of experience. There is usually a small office or permanent staff which acts as a liaison agency for the members in the intervals between meetings, keeps them informed on matters of interest to the organization, and prepares the meetings. It is a peculiar feature of these organizations that they are sometimes made "official corporations" by decree of the state where they have their permanent headquarters and that the latter often exercises considerable influence on their internal administration and finances them in full or in part. This type of control by a government over a private regional or Inter-American organization is probably due to the fact that in Latin America private organizations in general are often sponsored, financed, and controlled by the national government and this practice has simply been carried over into regional and Inter-American organizations.

As regards the official Inter-American agencies, it may be noted that, with the exception of the Inter-American Coffee Board (which will be discussed later), these agencies have no power to bind their member governments. Official Inter-American collaboration functions on a voluntary basis with many of the permanent agencies established primarily for the purpose of giving continuance to the work done by Inter-American conferences.⁵⁷ The

^{**} This is a greater increase than for all other types of agencies in this hemisphere. In 1935 there was a total number of thirty-one agencies in the Americas which increased in the next ten years by forty-five to the present number of eighty-six.

The only Latin American country with adequate railway facilities is Argentina (some 25,000 miles of railway lines). All of Latin America has approximately 90,000 miles of railroads.

⁵⁷ The earlier agencies were usually created by resolution of a conference, but of the more recent ones many have the legal basis of a treaty. This difference in origin has not had any

duties of official Inter-American agencies usually include one or more of the following: 1) to act as a center of information and documentation for member governments; 2) to act as the permanent commission or secretariat of periodical conferences of the members, in which capacity the agency makes preparations for and carries out the decisions of the conferences, and 3) to undertake scientific studies and on the basis thereof to submit plans or draft treaties to the member governments for their adoption, amendment or rejection.

However, the Inter-American Coffee Board, as will be remembered, is an agency entrusted with the administration of an agreement which allocates the United States coffee market to the Latin American coffee producing countries on the basis of annual quotas. The Board has authority, within prescribed limits, to change the quotas allotted to individual countries. Decisions of the Board, although binding on the member governments, are as a rule taken by majority vote.⁵⁸ Moreover, and contrary to the practice followed in regard to other Inter-American official agencies of giving each member government equal voting power, the voting strength of members of the Inter-American Coffee Board varies; the United States having been allotted 12 votes, Brazil nine votes, Colombia three votes, and the remaining The Board was given this extensive authority becountries one vote each. cause a joint agency with power to bind members was needed to ameliorate the disastrous effects of the war on the coffee producing countries of Latin America which had even in peacetime suffered from excessive surpluses and The Agreement under which the Board operates has aldepressed prices. ready been extended twice for periods of one year each and it is agreed that the Board has functioned satisfactorily.

Some of the official agencies have their counterpart in earlier international bureaus (Inter-American Radio Office, Inter-American Trade-Mark Bureau, International Office of the Postal Union of the Americas and Spain),⁵⁹ and these agencies are patterned after international bureaus elsewhere and, like them, are placed under the supervision of the government of the country where they are located. With these exceptions, the general practice is to vest supervision over official agencies in the group of member states, with each having equal voting power.^{59a}

effect on the permanence or effectiveness of the agencies. The American republics were the first to institute the practice of meeting periodically for the discussion of any and all problems of mutual interest to them. In addition to the International Conferences of American States many other periodical special conferences are held, such as conferences on child welfare, commercial matters, highways, scientific matters, sanitation, etc.

- In some cases a two-thirds majority or unanimity is required.
- ¹⁹ Some semi-official and private agencies are also regional counterparts of earlier international organizations (Inter-American Statistical Institute, Pan American Commission on Intermunicipal Coöperation, Pan American Railway Congress: Permanent International Association, Inter-American Federation of Automobile Clubs, etc.).
- ¹⁰² The only supervisory agency whose members have unequal votes is the Inter-American Coffee Board.

In this connection it is interesting to observe the gradual evolution of a truly Inter-American supervisory organ for the principal official agency, the Pan American Union, which had originally been placed under the supervision of the Secretary of State of the United States. This was in accordance with the then existing practice of placing central bureaus or offices of international administrative unions under the supervision of the government of the country where they are located. In the case of the Pan American Union (then called The Commercial Bureau of the American Republics) this regime lasted only six years and was changed by an informal agreement between the Secretary of State of the United States and the diplomatic representatives in Washington of the Latin American governments. Under the agreement, an Executive Committee was set up, composed of four Latin American diplomats appointed in rotation and the Secretary of State, who acted as chair-This Committee functioned as an advisory board for supervision over the administration of the Bureau and was later authorized to appoint the director, the secretary, and the translators of the Bureau, to fix their salaries and to dismiss them for cause. The Pan American Union was one of the first bureaus of an international administrative union to be placed under international control and is unique in that this change from national to international supervision was made neither by treaty nor by resolution of a conference of the member states, but merely by an informal agreement between the Secretary of State of the supervisory government and the diplomatic representatives of the other member states.

The Second International Conference of American States placed the Bureau under a Governing Board composed of the diplomatic representatives in Washington of the Latin American republics and the Secretary of State of the United States, acting as chairman. The influence of the United States on the Board was still further decreased by action taken by the Fifth and Sixth Conference and the recent Mexico City Conference. Resolution IX of the last named conference provides that the Board shall be composed of one ad hoc delegate designated by each of the American republics who shall not be part of the diplomatic mission accredited to the government of the country in which the Pan American Union has its seat, and that the chairman of the Board shall be elected annually and may not be reëlected for the term immediately following. These provisions will take effect at the expiration of the present period of sessions of the existing Board. The same resolution also terminates the practice of selecting for the position of Director General of the Pan American Union a citizen of the United States, and specifies that, beginning in 1955, the Director General shall be chosen by the Board for a term of ten years and may neither be reelected nor succeeded by a person of the same nationality. This is a novel arrangement. The directors of other Inter-American agencies are still uniformly chosen from citizens of the country where they are located.

In conclusion, it may be noted that with the signing of the Act of Chapul-

tepec on March 6, 1945, the American republics have transformed their association into an effective regional security system. Perhaps it is not too much to say that for the first time the Union of American States begins to approach the ideal of the early South American planners of hemispheric unity who had advocated the formation of a political union for mutual defense against foreign aggression. Under the formula evolved at the United Nations Conference on International Organization in San Francisco, April 25-June 26, 1945, this inter-American security system will also—for the first time since the beginnings of Inter-American collaboration—be fitted into a world security organization.

40 Not until 1936 were the American republics ready to accept the principle of continental solidarity for the preservation of peace in the Americas. At the Buenos Aires Conference they agreed that any act susceptible of disturbing the peace of this hemisphere affects each and every one of the American republics (Declaration of Principles of Inter-American Solidarity and Cooperation, Am. Int. Confs., First Supp., p. 160), and that they would consult together in the event that a war among foreign powers might menace the peace of this continent (Convention for the Maintenance, Preservation and Reëstablishment of Peace (same, p. 189). At the Lima Conference in 1938 they went a step further and agreed upon a method of consultation through emergency meetings of their foreign ministers (Declaration of Lima, same, p. 308). Finally, at the Mexico City Conference they provided for annual Meetings of Ministers of Foreign Affairs, and in the Act of Chapultepec they obligated themselves to consult together concerning the joint application of sanctions against any state (American or non-American) that should attack the integrity or the inviolability of the territory, or the sovereignty or political independence of an American state. Although this obligation has force only for the duration of the present war, the Act recommends that the American states conclude a treaty embodying its principles "in order that they may be in force at all times."

and in 1826, Bolivar urged that the congress issue a proclamation which would contain "an energetic and efficient declaration as that made by the President of the United States of America in his message to Congress of last year in regard to the necessity for the European powers of abandoning all ideas of further colonization on this continent, and in opposition to the principle of intervention in our domestic affairs" (Am. Int. Confs., p. xxiii). The treaty of Perpetual Union, League, and Confederation adopted by the congress (which never came into effect) actually contained a statement to that effect.

ATOMIC BOMBS IN INTERNATIONAL SOCIETY *

By Elbert D. Thomas

United States Senator from Utah; a Vice-President of the Society

That man could destroy his civilization has been known, theoretically, for many years; now there is actual proof that he can. Atomic bombs have been unleashed in international society, the results of which have no comparison in history.

However, the atomic bomb is proof of something more. It is proof that man's ideas can be mightier than man himself and mightier than the matter which surrounds him. The new atomic weapon is a product of the minds of brilliant scientists; it is not, in a real sense, a military development. It is an idea materialized, a frightful idea that only a few erudite physicists can grasp. It is the product of scientific laboratories and of remote electronic investigations. It is final proof that man's ideas have become superior to the very matter from which the thinking brain itself is constructed.

Much as the atomic bomb has been praised by persons of all classes since the destruction of Hiroshima the place of the atomic bomb in the history of culture does not seem to me-probably because I am so close to so many great and seemingly miraculous discoveries—to be as epic making as the invention of the wheel, the discovery of the storability of cereal foods, or the domestication of animals. From a military standpoint it is, to my mind, just another weapon. It is not as deadly as biological warfare would be if we stooped to that, nor as destructive as the use of rays or chemicals on a major scale. I say all of this despite the commonplace statement that the destructive strength of seventy bombs such as that dropped on Hiroshima would be equivalent to all other types of bombs dropped from the air over Germany and Japan. (If total death, complete destruction, become the objectives of actual warfare there are many instruments more deadly and more destructive than the atomic bomb. Those who have zealously assumed that the invention of the bomb would guarantee peace because it makes war so illogical are merely echoing what was said by so many persons when international control of money was certain to make war impossible and when, through the invention of the airplane, global warfare became a fact. War has never been that logical.

✓ In international society man's ideas are also paramount to physical matter. Law and custom will continue to be the controlling factors in that society, and they are but another product of man's thinking. The development of a

^{*} This article is an expansion of an unpublished interview given to a student, Glenn Everett, the day after the bomb was loosed over Hiroshima.

new technique of destruction will not upset men's way of living together: only a change in law and custom can do that.)

We can conceive of the world being a desolate place without life, for we have studied the moon. We have heard for twenty centuries the undeniable 1/2 truth that "he who lives by the sword shall perish by the sword." If mankind could be transformed by fear of consequences, however, he would have been reformed centuries ago when God sent the flood down on Noah's land. Yet the Bible suggests that within a generation after the Ark landed on Mt. lacksquareArarat sinning was just as bad, qualitatively, as it was before the deluge descended.

The fact that the use of the atomic bomb may have done more good than harm is a matter of blind luck. The facts appear to be that a number of powerful nations have the formula or something like it, and that others came so close that a correctible accident in one of the experiments changed the whole path of victory. It is not difficult to assume that the United States and Germany might well have discovered and perfected the bomb, gone into production, and come out with the weapon simultaneously. With such an hypothesis it is not difficult to appreciate the weapon, not as a fright used against a Japanese city, then a repeat performance to show we meant business, with no real thought that we should be compelled to continue its frightfulness, but as an actual day by day working tool of war. Add to this prospect the radar discoveries announced by the Chief of our Army Air Forces together with other new weapons which have a way of constantly coming along in greater intensity and abundance in any war, and we have the world's matchboxes in two pairs of hands. We do not need to guess whether the war would have continued if we had razed Berlin and Germany had razed Washington; if we had traded Essen for Pittsburgh, the Redwood Forest for the Black, and ruined the Mississippi in exchange for the Rhine. So long as there was authority in either land there would be striking power, and there would be striking. Nations slug it out to the death in the manner of the old prize fighters who went through tens upon tens of rounds until they could no longer stand. This was true of the Civil War in Spain. It was true of the war between the States in America. It was true of cornered Japan, cornered Germany, cornered Italy. They did not quit as up-and-coming. going concerns. They dropped from their last legs.

Nor are combatants discouraged by the prospect of total decimation of a race, or a people, or a world. What sterner lesson in history than the reduction cited above, when only mates of man and of animals, two by two, were left in the Ark? What more awful thing to contemplate than that a whole Carthage may again be wiped out to the last Carthaginian, as Germany told the Germans would happen if the Allied Nations should win, as Japan told the Japanese would happen if the Allied Nations should win, or as we would have hoped for in merciful comparison with the actual prospects in the event that the Axis should win.

It is, then, a matter of blind luck that the atomic bomb did not run rampant as not merely a one-sided weapon, used with great restraint, but as a weapon in the hands of both sides, to the very death. That is, it is a matter of blind luck unless one wishes to say that it was the work of Providence.

• Enduring peace cannot come through fear; it cannot be maintained by any technique of physical destruction, nor by fear of any single piece of war materiel. Peace can come only as a result of a respect for law and a desire to have such law justly enforced. Thus the structure of the world's law is more important than any bomb could ever be. The bombs can, and perhaps may, destroy much of world civilization. Only a structure of law can save it.

✓In the recent San Francisco conference mankind's leaders came together for the second time in a generation to try to formulate a system of law by which the nations of the world would be governed, to amend their customary method of living together enough so that they might enjoy mutual security from the terrible weapons which modern states then had in their possession. Was the San Francisco Conference a culmination of the compact theory of the origin of the state for the purpose of saving mankind from its own destruction and brutish tendencies?

Since the adjournment of the conference we have weapons which some thoughtful analysts predict will drive us back into the convention halls for more effective decisions, and while we do not have as many armed nations as we had a few weeks ago, and while we are working in military and political unity with those left who do have arms, nonetheless at least four great powers are left with great armies carrying many guns, and will continue to do so in greater numbers than are necessary to maintain a global police force. Competition hovers over us like a great shadow, and creates today, in contemplation, a situation not different in any way, except that we are still trying to agree, from yesterday. We are more nearly trying to agree than agreeing, more nearly trying to organize than organizing; and it is only from the honesty of our effort that there is hope. Peace never will come from fear. It may come from hopeful and honest effort.

Yet if man insists upon keeping his concepts of strict nationalism, absolute independence, and complete state sovereignty, this common effort must fail and man's new inventions, such as atomic dissolution, will be used for destructive purposes in the ultimate collisions of states' wills which are Physics may again dominate politics and the theory of relbound to occur.

ativity may thus save the world.

Could man endure to live in such an anarchic world with the seeds of destruction sprouting all about him? History, unfortunately, suggests that he can—and may—until catastrophe eventually overtakes him. Famines and plagues have periodically carried off millions of people in India and Both Italy and Japan have been areas of terrible natural destruction

from volcanoes and earthquakes. Yet persons have continued to live in the most dangerous areas of those lands. The Japanese devised earthquake-proof houses; the Italians did not even bother. Both India and China are apparently as far from a solution of the famine question as ever. Man can, and often has, lived uncomprehendingly upon the very brink of disaster. The uncertainty of life has often given it zest. Who wants anything but a brave young world?

The atomic bomb in many of its aspects is more terrible than any natural disaster. When an earthquake destroys man, it is nature's doing. When the atomic bomb destroys man, it is man planning his own destruction. Those who contend that the horrible prospect of future warfare will cure man of his bad habits reckon without the ability of man to live carelessly, blindly, and nonchalantly in the midst of a physical situation that may threaten to destroy him at any time. As Robert M. Hutchins declares, this indifference is "man's supreme sin."

In all of the world's history, civilization has never before presented so many excellent possibilities nor have the destroyers of civilization ever perpetrated so many ills. If, as some of the philosophers held, good and evil exist eternally, never have they dwelt side by side in such close proximity as they dwelt today. Man can transport himself quicker, can make for himself greater happiness, can live life more abundantly than it has ever been lived before. He can commit more evil, bring about more destruction, destroy more happiness than he has been able to do before.

In many ways, the world we have today is like the world implied in Cicero's great orations against Cataline. Cataline, a boy, a choice heir among the youths of Rome, had all of the opportunities that anyone had open to him, yet he deliberately chose evil. Perhaps the world is not so different after all. At any rate, the good and the evil are side by side. Man must awake from his lethargy. We and the world cannot be indifferent. We and the world must make a choice. In the Orient people who have long lived in fear of early death have developed a callousness to life and an indifference to human suffering which used to repel us. The Western world, however, is rapidly developing this same callousness and indifference to human values in its international society. Human butchery and starvation used to horrify us, but it has been common all over Europe for five years now. Evil forebodings can be drawn from this new callousness toward life.

In 1904, in the Russo-Japanese War, General Nogi of the Japanese Army performed one of the most notable acts on all the history of warfare when in a battle to capture Port Arthur he sacrificed several brigades of men and his own sons in order to capture a certain strongly-defended hill. He wanted the hill so that he could direct his artillery fire against the Russian naval base. He could have fired over the hill without taking it, but refused be-

cause blind fire would have endangered innocent non-combatants in the city below.

Less than thirty years later, in January 1932, the Japanese first practiced wanton, deliberate, killing of massed civilians by their bombing of Chapei, a suburb of Shanghai. The entire world was horrified by the murderous act. Sometime between those dates Japan had changed. But it was not only Japan that had changed. The United States had changed, too, and so had the other Western powers. Americans put up barricades to bar stampeding Chinese from the International Settlement. Hundreds died as they fought for safety. We were indifferent to their deaths. An American naval captain and his party callously climbed to the top of the tallest hotel to "watch the show." As this and other events of modern barbarism swept the world during the past thirteen years, Americans have asked themselves in the words of Cain, "Am I my brother's keeper?"

We can look now in retrospect at the war's contribution to the horrors of history. There was Buchenwald and other places like it, where German atrocities almost defied comprehension. There was the death march from The atrocities were so borrible from the other side that soldiers. American soldiers, have told me: these are not people; I have no more feeling in killing one of them than I would an animal; in fact, I would prefer to let the animal live. Such is retaliatory feeling. One of the first developments of the war was the instruction to our trainees not to be so lady-like about the They were told to forget the sportsmanship they had applied on the football field. They were taught to kill suddenly in the dark and without warning. They were not told to kill a helpless enemy soldier who might be taken prisoner, but I leave it to you whether our boys always let them live. The competition was pretty fierce for dastardly conduct, and while we did not meet the competition completely, we compromised our best standards, and did lower them. Things began to be done which under 1939 standards very definitely would have amounted to American, and Russian. and English, and Chinese atrocities.

Today few citizens pause to realize that we, once the defenders of humanity and the foremost advocates of international law, have unleashed the most horrible weapon of all horrible war. The atomic bomb takes no account at all of women and children. It destroys indiscriminately and mercilessly everything in its path. Will the effect of the atomic bomb be to make Americans even more callous toward human life? Will it brutalize the men who wield it? Will it make us even more indifferent toward our international responsibilities?

The war has been bad enough, but the drift away from morality and human feelings on the part of all the world during the past decade has been even worse. Never was a reminder of sound principle in the conduct of world affairs more urgent. No one can foresee the tragic results of failure to reëstablish international morality, which has so completely disintegrated before and during the present world struggle. Once again, what is happening to men's minds is more important than what has happened in the physical realm.

The world is not going to be changed overnight by any single invention. Man's mind moves slowly, over a period of years, and his laws and customs change slowly with his thinking. It is not war and not the atomic bomb which has changed the world; it is man's mind, making use of these terrible tools, that has changed it.

So long as man lives upon the Earth and is the social animal that he is, man's relationship with man will continue to be the most important thing in civilization. Men have to work courageously together to improve their relationships in world society. It is a problem that urgently challenges both the church and the state.

The inability of the Christian church to cope with this wave of antihumanism and the disintegration of morality through the world is one of the most disquieting realities of modern history. The church's failure to keep abreast of the times, to provide a modern solution of political and social problems, must be held partly responsible for the present surge of aggression and moral irresponsibility which has horrified the civilized world, and which threatens the very existence of civilization. The Christian church needs to take a practical, vital, interest in men's social relationships. If man is only a savage brute modern civilization is doomed. The church declares forcefully that he is not, and if man can come to a full appreciation of his own majesty and his spiritual and moral responsibilities the teachings of Jesus may yet rise triumphant in the struggle with the philosophies of Neitzsche, the militarist, and Machiavelli, the opportunist.

I speak as a Christian and as a church member. I am sure I have many friends among my Jewish, my Confucianist, and my Buddhist associates who would speak the same of their great moral systems and for those systems' inability to cope with this problem. With the possible exception of the Jewish, each of those systems have had their equivalents of Neitzsche and Machiavelli.

The state has the responsibility of erecting and codifying a system of international law which both nations and individual men will recognize and obey. The church can build character, and the state can transform that character into institutions which reflect it. Our own nation has a grave responsibility for leading the world away from war and armaments, away from national selfishness and irresponsibility, and toward a united world society where the use of atomic bombs against his fellow men will be but a bad dream from man's incredibly barbaric past.

Is the task hopeless? Are the nations so foolish that they will commit suicide rather than give up a little of what they claim for themselves in order to gain much for all?

The world must be regarded as a unit.¹ An unwholesome condition in any part affects the entire world. Despotism, treachery, and treaty breaking in any part of the world must have their evil influence on every other part. On the other hand, "A single good government is a blessing to the whole earth." The interdependence of the nations, their differing abilities to produce various things of universal worth, makes it necessary to think of the world as a unit economically as well as politically. There can be and there must be a universal respect for law if not for government. By that I mean that governments can maintain separate jurisdictions within themselves and at the same time live in harmony with the will of all among themselves.

That free men can live and work in unison has been proved by the great American experiment. The conflict in the world today is the eternal conflict. Shall we be free in a world of free men, or shall we be passive followers of a single will. The weaknesses of Mussolini and Hitler were that they failed to see the possibilities of any unity among free men. Their great mistake was merely that of assuming that unity can come only by the destruction of the individual in his service to a single will.

The world's great task is the same as it was when the Constitution of the United States was drafted and ratified. How to bring one out of many— E Pluribus Unum—is the task that faces us today as it faced our fathers. It must be done as they did it. It is because of my firm belief in the great American experiment that I always advocate that world unity can only come through American leadership and under the auspices of the American It is in America that the federal technique of government has been most fully worked out. It is in America that the theory of dual and plural citizenship has been made practical. It is in America that we can unite for some purposes and be divided for others. It is in America that liberty is maintained by voluntary cooperation instead of forced unity. America that national and state sovereignty are permitted to exist side by side, not without conflict to be sure, but with those conflicts adjusted by peaceful means. It is in America that the individual has the right to have and to hold, to go and to come, to live life in a greater sense than it has ever been lived before, with each man "under his own vine and fig tree," as some prophet of old foretold man should live. After one hundred and fifty years of experience, if the world would but catch America's spirit, no one need feel that the efforts being made by our leaders today are in vain. Slowly but surely man is being made conscious of the fact that, no matter

¹ See my "World Unity as Recorded in History," in *International Conciliation*, No. 297 (February, 1934).

² See my Thomas Jefferson, World Citizen, New York, 1942, p. 198.

what nation he belongs to, that nation in turn is but one of a community of nations. That fact realized, that fact maintained, surely then the standards for nations can be as readily set up as the standards for individuals are set up within the community or the nation. Man lives in law and is not free from the restraints of his neighbors. A nation, too, lives in law and should not be free from restraints of its neighbors. (If we fail to bring about a better world through the organization of the nations we will fail because we did not realize the fact that the earth is a unit and the nations of the earth are but individual entities within that unit and must adhere to the prevailing will of the community of nations. If we but do this we shall have a sanction for international law as binding and as great as the fundamental sanction which we have in our own Constitution.

When we say in our Constitution that "we, the people," in order to accomplish certain things do certain other things there is no questioning our Constitution or our right to say "we, the people." What state among our forty-eight questions that right today? Can we not expand the idea as America has expanded from thirteen small states to forty-eight mighty ones and say: We, the people of the world, in order to form, in order to do, in order to act, establish the following: . . ."? 3

Practically every pitfall that is pointed out by those without faith in the earth today was pointed out by those without faith in our American Constitution one hundred and fifty years ago. If those theories which were dreamed of by the fathers, if that Constitution, which we so glibly call inspired, contain the elements of truth, why should anyone criticize me when I say that the American Revolution is still on, that it has not accomplished its ultimate objective, and that its full meaning in the earth will not be understood until world unity is made manifest, that same type of unity which we have made manifest in our one hundred and fifty years of history? A unity which has destroyed war among us can by expansion destroy war in the earth.

It was a heroine in one of the early Greek dramas who wailed, "Oh, Why! Oh, Why! do men unite so readily for war, but never unite for peace?" Is the task hopeless? Are nations so foolish that they will not give a little of that which they claim for themselves in order to gain much for all? There were those among our fathers who talked against our Constitution with that spirit, but they did not prevail. There are those in the world today who still have little faith. May I suggest this simple approach: had you lived in Washington's time would you have been happy to have been one of those without faith in Washington's cause; had you lived in Lincoln's time would you now be proud that you were one of those who were against what Lincoln was trying to do? We will have to make decisions.

The atomic bomb, itself, represents the strength of a united free people,

The authors of the San Francisco charter did not dare go further than "We the peoples" (our italics).

acting through their government. It was a whole people in action. The big fact about its successful development is that the American people threw all their resources behind it. Two billion dollars were spent. How pygmy the greatest of private or endowed experimental activities are when compared with this two billion. And, unleashing our imagination, how pygmy will be the benefits derived from atomic energy should the whole of the peoples of the earth unite and live in a peaceful community of nations for the benefit of mankind. The acquisition of any knowledge does not redound to mankind's benefit unless mankind willingly accepts the moral obligation which accompanies it.

EDITORIAL COMMENT

ACCEPTANCE BY THE UNITED STATES OF THE OPTIONAL CLAUSE OF THE INTERNATIONAL COURT OF JUSTICE

"Unless we are prepared to take all steps which are necessary to effectuate, our membership in the United Nations," the Senate Committee on Foreign Relations declared in its favorable Report on the Charter of the United Nations,1 "we would be merely deceiving the hopes of the United States and of humanity in ratifying the Charter." This sound exhortation concludes the Committee's pregnant comment that the establishment of the United Nations is a beginning and not an end and that "to the extent to which we do participate actively in this Organization, we will by that very process be overcoming the imperfections in the Charter." One of the early and vigorous criticisms of the Dumbarton Oaks Proposals was their lack of emphasis upon law and justice; Senator Vandenberg was among the glost effective critics of this defect. The Charter as elaborated at San Francisco went far toward meeting these criticisms. One important step which was not taken in drafting the Charter was to confer upon the International Court of Justice what has come to be known as "compulsory jurisdiction." The "optional clause" found in Article 36 of the Statute of the Permanent Court of International Justice was retained. The United States, having accepted the Statute of the new Court as an integral part of the Charter, has now the opportunity to strengthen the judicial arm of the United Nations by exercising its option in favor of the automatic submission of those types of legal disputes which are listed in Article 36.

The history of Article 36 of the old Statute is generally familiar and may be briefly summarized. The Committee of Jurists which framed the Statute of the Permanent Court of International Justice in 1920 proposed that the Court should have compulsory jurisdiction in stated categories of legal dis-Elihu Root, the American member of the Committee, strongly advocated this proposal. The Council and Assembly of the League of Nations, to which the report of the Committee of Jurists was submitted, were not ready to take that step at that time. On the suggestion of a Brazilian jurist, however, the "optional clause" was inserted in Article 36 of the This provision left it optional with States to declare at any time their acceptance of the Court's compulsory jurisdiction. Before the outbreak of World War II fifty-one states had voluntarily made such declara-It became the established practice for states to include reservations in such declarations, the most usual being those which limited the effect of the declaration to a stated number of years or which limited the applicability of the declaration on the basis of reciprocity.2 The Court was also given

¹ Exec. Rep. No. 8, 79th Cong., 1st Sess.

² For an analysis of the forms of declarations see Hudson, Permanent Court of International Justice, 1920-1943, New York, 1943, Sec. 457.

"compulsory jurisdiction" by numerous special treaties, such as those dealing with the mandates and minorities, and, more generally, for the purpose of deciding on the correct interpretation of any disputed provision of a treaty which included a clause to this effect. Only the general jurisdiction under declarations made in accordance with Article 36 is considered here.

The Dumbarton Oaks Proposals did not contain any direct specification on this point, although paragraph 6 of Section A of Chapter VIII was interpreted by some to imply that the Court would have compulsory jurisdiction of "justiciable disputes." ³

The drafting of the Statute of the new International Court of Justice was entrusted to a United Nations Committee of Jurists which met in Washington from April 9 through April 20, 1945, forty-four states being represented. The Committee of Jurists throughout all its deliberations bore in mind its essential character as a group of experts whose conclusions were to be submitted to the United Nations Conference at San Francisco. The point was frequently made that political questions must wait to be settled at that The compulsory jurisdiction of the Court was the subject of intense discussion. In the first debate on this question at the Sixth Meeting of the Committee on April 12, impressive statements in favor of including a provision for the compulsory jurisdiction of the Court were made by representatives from Brazil, China, Turkey, and Czechoslovakia, supported by a majority of the members of the Committee, but some of the speakers expressly reserved final decision to their delegations at San Francisco. On the other hand the representative from the United Kingdom, while calling attention to the fact that his country had accepted the Optional Clause of the old Statute, made the important observation that the new Statute was to be an integral part of the Charter rather than a separate instrument as was the Statute of the Permanent Court of International Justice with reference to the Covenant of the League. Accordingly he thought it would be appropriate, if the principle of compulsory jurisdiction were acceptable to all the States, to include such a provision in the Charter rather than in the Statute. The representative from the Soviet Union noted that the inclusion of a provision for compulsory jurisdiction in the Statute might defeat its purpose, which was to broaden the competence of the Court, since more States might be induced to accept such jurisdiction on an optional basis than if an attempt were made to compel its acceptance through ratification of the Charter, embodying the Statute. Representatives from France, the Netherlands, Yugoslavia, and Haiti were among those who favored the retention of the Optional Clause, at least until the basic political issue was settled at San The debate continued at the Seventh Meeting of the Committee on the following day. At this session the representative from the United States strongly urged that the wisest course was to retain the Optional

^{*}The paragraph reads in part: "Justiciable disputes should normally be referred to the international court of justice."

Clause in the draft statute which the Committee was to submit to the Conference.

The outcome of the discussion was that two subcommittees were appointed, one of which prepared a draft based on the optional clause model of Article 36 of the old Statute, and the other a draft under which the acceptance of the Statute would include the automatic acceptance of the compulsory jurisdiction of the Court in the familiar categories of legal disputes. In the discussion of the reports of the two subcommittees, at the Tenth Meeting, on April 16, considerable attention was devoted to the question of including various reservations in declarations made optionally under Article 36, but this question was deferred to the San Francisco Conference. The report of Professor Basdevant, Rapporteur of the Committee of Jurists, includes this statement of the results of the Committee debates:

. . . it does not seem doubtful that the majority of the Committee was in favor of compulsory jurisdiction, but it has been noted that, in spite of this predominant sentiment, it did not seem certain, nor even probable, that all the nations whose participation in the proposed International Organization appears to be necessary, were now in a position to accept the rule of compulsory jurisdiction, and that the Dumbarton Oaks Proposals did not seem to affirm it; some, while retaining their preference in this respect, thought that the counsel of prudence was not to go beyond the procedure of the Optional Clause inserted in Article 36, which has opened the way to the progressive adoption, in less than 10 years, of compulsory jurisdiction by many states which in 1920 refused to subscribe to it. Placed on this basis, the problem was found to assume a political character, and the Committee thought that it should defer it to the San Francisco Conference.

At San Francisco there was no important change in the alignment. The majority of the members of Committee I of Commission IV, which dealt with the Court, favored the inclusion of compulsory jurisdiction. It was clear that the Soviet Government was not prepared to accept the Court at all if the compulsory feature was included. The position of the United States, while not so flatly stated, was to the effect that the Optional Clause was strongly preferred. In the minds of many delegates the issue seemed to resolve itself into this simple question: is it better to have a Court without compulsory jurisdiction which will be accepted by the Soviet Union and the United States, or a Court with compulsory jurisdiction but without the two

⁴ Report on Draft of Statute of an International Court of Justice Referred to in Chapter VII of the Dumbarton Oaks Proposals (Professor Jules Basdevant, Rapporteur) Submitted by the United Nations Committee of Jurists to the United Nations Conference on International Organization at San Francisco (San Francisco, April 25, 1945, Document Jurist 86, G/73, April 25, 1945, being a revision of Doc. 61 issued in Washington on April 20; Conf. Doc. 857 (English) IV/1/70, June 8, 1945, p. 18.

^{4a} There is no doubt that the Committee in general shared the understanding expressed by the United Kingdom delegate on May 28, when he said: "Two countries, whose cooperation is essential, are not ready to accept compulsory jurisdiction." *Conf. Doc.* 661 (English) IV/1/50, May 29, 1945, p. 4.

principal states of the world? There could be only one answer, no matter how reluctantly given, to the question posed in this form. This was the more true in view of the fact that the Statute is part of the Charter, and the inacceptability of the Statute might result in the rejection of the Charter itself, thus preventing the United Nations from coming into existence. Under the circumstances the decision was wise. It does leave an imperfection in the Charter, but, to borrow the words of the Senate Committee on Foreign Relations, it is an imperfection which can be overcome by a form of active participation in the Organization, namely a declaration under Article 36. Committee IV/1 adopted a resolution urging all states to make such declarations.

The chief debates on Article 36 took place in the Fourteenth and Seventeenth Meetings of Committee IV/1 and in its Subcommittee D.* There is no need to repeat the arguments made but certain suggestions merit attention. There was further discussion of the question of permissible reservations to declarations made under Article 36, and the form used in the General Act of 1928 was suggested as a model to be followed. The reservation which many delegates evidently had in mind was one which would limit the obligation of automatic reference to the Court to disputes arising after the declaration was made, thus excluding old controversies which the parties had hitherto been unwilling to submit to arbitration or judicial settlement. delegates of New Zealand and Canada made the sound point that the word "compulsory" is misleading and should not be continued in use. If declarations are made under the Optional Clause, and one of the states which has made such a declaration submits a case involving another such state to the Court, the Court has jurisdiction. The word "compulsory" has no more pertinence to the functioning of the international tribunal than it has in the normal judicial processes of national courts. The Canadian delegate also called attention to the inappropriateness of the Latin term "ipso facto" in

The final vote, on June 1, was 31 to 14 in favor of the text including the Optional Clause. The following voted in the affirmative: Argentina, Australia, Belgium, Brazil, Byelorussia, Canada, Chile, China, Colombia, Czechoslovakia, Ethiopia, France, Honduras, India, Iraq, The Netherlands, New Zealand, Nicaragua, Norway, Peru, Philippine Commonwealth, Saudi Arabia, Syria, South Africa, Turkey, Ukrainian S.S.R., U.S.S.R., United Kingdom, United States, Venezuela, Yugoslavia, of whom Australia, China, New Zealand and Turkey stated that they voted in favor "only to prevent a stalemate." The following voted in the negative: Bolivia, Costa Rica, Cuba, Ecuador, Egypt, Salvador, Greece, Guatemala, Iran, Liberia, Mexico, Panama, Paraguay, Uruguay. See Conf. Doc. 759 (English) IV/1/59, June 2, 1945, p. 6, as corrected in Doc. 796 (English) IV/1/59 (1), June 5, 1945.

⁵ Conf. Docs. 661 and 759, as cited.

[•] Report of Subcommittee D of Committee IV/1, Conf. Doc. 702, IV/1/55, May 31, 1945, particularly the important interpretation of the old practice of adding reservations to declarations which the Subcommittee considered "as being henceforth established" as the proper interpretation of paragraph 3 of Article 36. See also the excellent Report of the Rapporteur (Nasrat Al-Farsy, Iraq) of Committee IV/1, Conf. Doc. 913 (English) IV/1/74 (1), June 12, 1945, p. 11.

Paragraph 2 of Article 36 as an equivalent of the French expression "de plein droit." Unfortunately neither of these suggestions for change in phraseology was adopted.

The text of Article 36 as finally adopted in the Statute of the International Court of Justice is as follows:

- 1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
- 2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
 - a. the interpretation of a treaty;

b. any question of international law:

- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.
- 3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
- 4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
- 5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.⁷
- 6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

During the Senate debates on the Charter, there was notably little discussion of the Court and its Statute. This is a happy indication of the progress which the United States has made in the direction of international coöperation. The past debates on the Permanent Court of International Justice were filled with discussions of its relation to the League of Nations and that relationship was largely responsible for the non-participation of the United States; with membership in the United Nations, acceptance of the International Court of Justice is properly taken for granted. On July 28 Senator

'This important provision was inserted as part of the attempt to avoid breaking the "chain of continuity with the past"; see Charter of the United Nations, Report to the President on the Results of the San Francisco Conference, by the Chairman of the United States Delegation, The Secretary of State, June 26, 1945, Dept. of State Pub. 2349, p. 140. It was estimated at the Conference that about twenty such declarations would become immediately applicable to the new Court, others having lapsed or having been made by States not original parties to the new Statute.

Morse introduced Senate Resolution 160 whereunder the Senate would recommend to the President that he deposit a declaration under Article 36 on behalf of the United States. In the course of the Hearings, Senator Vandenberg had asked Mr. Hackworth, Legal Advisor of the Department of State, how such a declaration should be made. Mr. Hackworth stated: "... if the Executive should initiate action to accept compulsory jurisdiction of the Court under the Optional Clause contained in Article 36 of the Statute, such procedure as might be authorized by the Congress would be followed, and if no specific procedure were prescribed by statute, the proposal would be submitted to the Senate with request for its advice and consent to the filing of the necessary declaration with the Secretary-General of the United Nations."

The initiative may now be taken by the President or by the Senate acting on Senate Resolution 160, the passage of which would amount to advice and consent given in advance. Action should be taken soon after Congress reconvenes. As the Senate Committee on Foreign Relations noted, ratification of the Charter included acceptance of an obligation to settle our international disputes by peaceful means; for legal disputes, what more appropriate means than submission to the court? The experience of fifty-one states including such great powers as Great Britain and France, which made declarations under Article 36 of the old Statute, demonstrates that this is no dangerous venture. A joint report of the Canadian and American Bar Associations in April 1944 advocated giving the Court compulsory jurisdic-It is notable that, throughout the discussions in the Committee of Jurists in Washington and in the committee sessions in San Francisco, no dissatisfaction with the work of the Permanent Court of International Justice was expressed. There is every reason to suppose that the new Court will be equally satisfactory if not superior in view of the more nearly universal auspices under which it will function. The submission of any legal disputes which may hereafter arise between the United States and other nations would be in accord with our traditional advocacy of judicial settlement and the reign of law among nations. A declaration by the United States under Article 36 of the Statute would do much to strengthen the new Court at the outset and thereby to strengthen the United Nations organization as a Like all litigants in court the United States would undoubtedly lose some cases as it would win others. We have not suffered in the past from such adverse decisions as those of the arbitral tribunals which rejected our contentions in the great controversies involving the seals of Behring Sea and the North Atlantic Coast Fisheries, and the world has gained through the example set by the peaceful adjustments. Scientific ingenuity has reenforced the conclusion that it would be better to strengthen the peaceful

⁹¹ Cong. Rec. p. 8249.

^o See in general an article by Judge Manley O. Hudson to be published in the American Bar Association Journal for September, 1945.

processes of the United Nations and lose a lawsuit, than to weaken the Organization and win a war.

PHILIP C. JESSUP

INTERNATIONAL LAW AND THE CHARTER OF THE UNITED NATIONS

It would be gratifying to be able to say that the Charter of the United Nations established, or assured, the reign of law among nations; but the Charter does very little toward strengthening the law of nations.

The Dumbarton Oaks Proposals mentioned international law at only one point, and that in a paragraph whose purpose was to prevent the application of international law in the case of "domestic questions." This omission was due partly to the fact that the Americans who were chiefly responsible for the draft which became the basis of discussion at Dumbarton Oaks were impatient with law and lawyers and inclined rather to think in terms of political "realism"; for the most part, however, the omission was unintentional and due to concentration upon matters of security.

Numerous comments from both official and unofficial sources at once called attention to the omission, and a large number of amendments were proposed by governments for the purpose of making the new system more of a legal order. Some of these sought to include law, or justice, among the Purposes and Principles; some would have required the Security Council to render its decisions concerning peace and security in accordance with international law; others, and many of them, insisted that legal disputes should be submitted to judicial settlement; others, finally, wished to include among the functions of the Organization the development of international law.

At the beginning of the Conference a Four-Power amendment was introduced, adding to the first of the Purposes of the United Nations that the adjustment or settlement of disputes should be "with due regard to the principles of justice and international law." This amendment was accepted by the sponsoring powers at almost the same moment at which they accepted another amendment which struck out (from the clause concerning domestic jurisdiction) the only reference to international law found in the Dumbarton Oaks Proposals. It was strengthened later to read "in conformity with the principles of justice and international law."

A further improvement over Dumbarton Oaks was inserted in Article 13 of the Charter, which includes among the functions of the General Assembly that of making recommendations for the purpose of "encouraging the progressive development of international law and its codification." It is perhaps worthy of notice that this text encourages development and codification, rather than codification alone, or development through codification. The Assembly has no legislative power in this respect; efforts to include such phrases as "revision of the rules and principles of international law" failed, as did attempts to authorize the General Assembly to enact rules of law binding upon Members if approved by the Security Council.

In general, however, international law has a secondary position in the Charter, and political and security interests are preponderant. lum of political thinking has swung from the "idealism" of Woodrow Wilson's day to the other extreme, the "realism" of Dumbarton Oaks and San The emphasis is now upon the prevention of the use of force between nations, rather than upon settlement in accordance with law. effort to add to the initial purpose—"to maintain international peace and security"—the words "and justice" was rejected, as explained by the Rapporteur for Committee I/1, on the ground that when the Organization has used its power to stop war, "then it can find the latitude to apply the principles of justice and international law"; and he added that it could be put elsewhere "without losing any of its weight or strength as an overruling norm of the whole Charter." The word "justice" was, however, added as the result of a Bolivian amendment to paragraph 3 of Article 2, and Members are thereby required to settle disputes "in such a manner that international peace and security, and justice, are not endangered." The Rapporteur explained that the Committee felt, in the light of some unjust settlements of the past, that "it is not sufficient that peace and security are not endangered. It added 'justice.'"

The words "by international law" were eliminated from the clause excepting domestic questions in the Dumbarton Oaks Proposals, in the process by which that paragraph became one of the fundamental Principles in Article 2, and thereby applicable to the whole Charter. Various delegations had offered amendments seeking to restore these words or their effect; and in the final debate on the subject, Mr. John Foster Dulles, speaking for the United States in opposition to this effort,

pointed out that international law was subject to constant change and therefore escaped definition. It would, in any case, be difficult to define whether or not a given situation came within the domestic jurisdiction of a State. In this era, the whole internal life of a country was affected by foreign conditions. He did not consider that it would be practicable to provide that the World Court determine the limitations of domestic jurisdiction or that it should be called upon to give advisory opinions since some countries would probably not accept the compulsory jurisdiction clause.

Senator Rolin of Belgium argued in reply that, because of the changing world, there was very little left which was still solely within domestic jurisdiction, and sought to include the words "according to international law." The vote was 18 to 14 in favor of his proposal, but, lacking a two-thirds majority, it was defeated.

While there was a very strong demand for compulsory jurisdiction of the Court over justiciable disputes, the effort of course did not succeed, and such jurisdiction remains only for those States which accept the Optional Clause, or other obligation outside the Charter. The Security Council, under Arti-

cle 36, paragraph 3, "should, as a general rule," recommend to the parties that they refer legal cases to the International Court of Justice; and when the Council has a dispute in its own hands, it may request the Court to give an advisory opinion upon legal questions involved. The Council can do no more, however, in any case, than recommend terms of settlement, and it is not obligated to include the advice of the Court in these recommendations.

The international lawyer will find various matters of novel character in the work of the San Francisco Conference. It was, for example, declared in Committee that the Preamble is of equal validity with the Charter text. A right of withdrawal was also stated in Committee, though not in the text; and it was asserted in hearings before the Senate Committee on Foreign Relations that this right is valid and unquestionable. These, and other such interpretations, raise interesting questions as to the value of travaux préparatoires. It is unnecessary to speak of "States, or Members," since it is understood that all Members are states. Not only was the Organization itself given juridical character, but each of the three Councils apparently has treaty-making power, as also have "groups of members" (Article 43). If such results are regarded as unorthodox, it should be remembered that the Conference was an international body of great authority, competent to blaze such new trails as it might wish.

If, in the building of the United Nations, more emphasis was placed upon security than upon law, this is not necessarily to be regarded as retrogression. Professor Brierly tells us, in his recent little book, "The Outlook for International Law," that

Our common phrase "law and order" inverts the true order of priority, both historically and logically. Law never creates order; the most it can do is to help sustain order when that has once been firmly established. . . . But always there has to be order before law can even begin to take root and grow.

It is doubtless equally true that order can not for long be maintained without law and justice behind it; but we have had ample experience in the past centuries, and especially during the past few decades, to show us that international law can not be upheld, or developed as it needs to be, without an international organization which can maintain order.

The United Nations makes possible, though it does not assure, the prevention of the use of force for selfish or national ends. We are perhaps now at the stage of the Vigilantes in the development of international law and order; and if the leading citizens of the community of nations can work together for a time to maintain order—as is the theory of the United Nations Charter—it will be possible to hope for a more rapid development and strengthening of international law. From this viewpoint international lawyers have a better opportunity than ever before to develop their law; and they now have a support which they have never had before, from peoples all the world over, who are beginning to realize more fully how necessary the reign of law among nations is to them. From this viewpoint, too, international lawyers should recognize as their first and prerequisite task the explanation, encouragement, and development of the United Nations system. It will be necessary, in meeting this great opportunity, to realize that in all fields reconstruction is proceeding rapidly, and that new ideas and new methods are called for.

Among the first steps of leadership which American international lawyers should undertake is that of persuading the American people to accept the Optional Clause of the Statute of the International Court of Justice. This was perhaps too great a step to expect of the American people until they had shown themselves willing to accept the obligations of membership in an international organization. Now that this step has been taken, the next step is to align the American nation with the many others who have already accepted the Optional Clause; and this step would go far to assure other peoples, now somewhat dubious, that the American people stand for a legal order and do not intend to exert their enormous strength in the game of power politics. Similarly the influence of the United States in the Security Council should always be toward the settlement of disputes in accordance with law and justice.

International lawyers will naturally support, in the General Assembly and elsewhere, the "progressive development of international law." The opportunity for development in this direction will be found, it is believed, not so much in systematic codification of the law of the past as in the solution of particular problems. The General Assembly and the Economic and Social Council have a wide range of functions, and each of the "specialized agencies" affords opportunity for the growth of new rules of law within its field. Through such efforts, rather than in the slow growth of customary law, progress must now be achieved. International lawyers can now contribute more by the study of particular problems, such as those in communications, or trade, or human rights, and the development of new rules of law or the application of old rules for these situations, than by abstruse studies of ancient formulae.

CLYDE EAGLETON

DEVELOPMENT OF INTERNATIONAL LAW BY THE UNITED NATIONS

Article 13 of the United Nations Charter imposes upon the General Assembly an important and onerous obligation:

The General Assembly shall initiate studies and make recommendations for the purpose of:

a. . . . encouraging the progressive development of international law and its codification.

International law has so many defects that international lawyers have constantly been on the defensive in an effort to convince laymen and private

lawyers alike that the law of nations has any existence at all. The Charter is a challenge to international lawyers to take the offensive by pointing out and analyzing the defects and the gaps in the international legal system and then demanding that the governments represented in the General Assembly put content into Article 13.

It would be stultifying at this juncture when the world is crying for more law, more modern law, more effective law, for the General Assembly to content itself with a mere continuation of the efforts of the League of Nations to bring about the progressive codification of international law. Old familiar legal norms should be restudied and if necessary revamped, but, to adopt the words used by a committee of the San Francisco Conference in another connection, it would be "deceiving the hopes of humanity" if the movement did not go further.

The great gaps in the corpus of international law are found in the fields of international politics and economics. What, under the Charter, is the legal consequence of the use of illegal force? When is the use of force illegal? the non-recognition of aggressive conquest now confirmed in international law and if so what is the obligation and what the consequences of its violation? Who is a "war criminal" and what is the penalty for his crime? Are the obligations to refrain from intervention, as stated in Inter-American treaties, binding upon all states whether members of the United Nations or not? What are the legal relationships between members of the United Nations engaged in applying force in accordance with the Charter and other members who have not been called upon to supply contingents or non-Members States? If private property is requisitioned or damaged is the United Nations liable to make reparation? What measures of pressure short of force are illegal—subversive propaganda by radio, subventions or encouragement to revolutionists? In case a civil war is not found by the Security Council to be a "threat to the peace, breach of the peace, or act of aggression," are member states to be "neutral"? May they adopt embargoes or insist upon protection of their private traders regardless of which faction controls the ports and the sea and air approaches?

In the economic field, when are we to have internationally anything akin to the development in national law of notions of unfair competition and illegal monopolistic practices? Should the development of this body of law be left to the Economic and Social Council which functions under the authority of the General Assembly? Tariffs and other discriminatory trade practices can end more slowly, but as surely, the life of a nation as can the atomic bomb; the Charter imposes a duty to refrain from the use of force, but does it not also impose a duty to refrain from economic strangulation or exploitation? If so, what is the extent of that duty and by what standards shall its breach be measured?

On the procedural side, is it preferable to work out each problem by international convention devoted to specific evils and practices or to attempt

(also by treaty) the formulation of general principles and norms? it be left to the International Court of Justice to pick particles of international law out of their "twilight existence" by impressing upon them a "jural quality" through its imprimatur? Which procedure is better for which subjects? Which topics are the most pressing? Which portions of international law, actual or potential, are peculiarly in need of technical legal studies by jurists, and which require the wisdom of political and economic statesmanship? The Legal Adviser of the International Labor Office has made a strong case for the establishment of an International Legislative Drafting Bureau. The Committee on the Codification of International Law of the Section on International and Comparative Law of the American Bar Association is currently recommending that the General Assembly of the United Nations set up a Standing Committee to deal with the codification and development of international law; that the Secretariat should have a special officer or section working continuously on this problem; and that contacts be established with intergovernmental and private groups throughout the world with a view to common cooperative effort. is suggested that the proposed Standing Committee should be created at the first meeting of the General Assembly with instructions to prepare plans for the continuation of the work and to report back to the second meeting of the General Assembly. The problem needs to be dealt with as one of urgency and of continuing urgency throughout the years.

It is clearly possibly to categorize the problem in a variety of ways. One may for example distinguish on the one hand the clarification and amplification of the traditional body of international law from the principles and rules which must be worked out in order to put living flesh on the Charter's skeleton. Undoubtedly lawyers will continue their semantic discussion of the meaning of "codification," approving or disapproving that process according to the selected definition and the definer's predilections. The objective is to supplement the existing body of law governing the relations of states both among themselves and, in the light of certain provisions of the Charter and of modern trends, with individuals. It would be folly to ignore the implications for international law as traditionally conceived, of the establishment of a commission for the promotion of human rights which is required by Article 68 of the Charter, taking into account the general background of the discussions at San Francisco which led to the insertion of that provision and the reiterated references to "human rights" and "fundamental freedoms."

The explosion over Hiroshima on August 6 loosened the bolts which held together the basic thinking in the social sciences. Do we know yet whether the foundations have been so weakened that we must start to build an entirely new conceptual structure? The physical scientists of the United

¹ As per Mr. Justice Cardozo in New Jersey v. Delaware, 1934, 291 U. S. 361.

² C. W. Jenks, "The Need for an International Legislative Drafting Bureau," this JOURNAL, Vol. 39 (1945), p. 163.

States, aided by scientists from other countries, mustered in a great coöperative effort, furnished this age with the power which caused the explosion. The task of the physical scientists in developing and controlling that power will continue. The task of the social scientists, including the international lawyers, has begun. They will not have the advantage of magnificently organized and directed coöperation inspired by the necessities of war. They must have, in its place, the intensive, continuous, and whole-hearted support and leadership of the General Assembly of the United Nations, discharging its obligations under the Charter and inspired by the necessities of peace.

PHILIP C. JESSUP

THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

All Members of the United Nations pledge themselves, in Article 56 of the Charter signed at San Francisco, to take both joint and individual action, in cooperation with the United Nations organization, to bring about universal respect for, and observance of, human rights and certain fundamental freedoms for all without distinction as to race, sex, language, or religion. The Charter contains no enumeration of the human rights and fundamental freedoms of which the Members constitute themselves the champions. sufficiently understood, however, that these rights and freedoms include those which have been guaranteed by bills of rights and other constitutional instruments in the democratic nations; for example, to paraphrase a part of Dr. Lauterpacht's draft of an international bill of the rights of man, freedom from arbitrary arrest and detention, freedom of religion, freedom of speech and expression of opinion in writing, freedom of association and assembly, freedom from violation of the sanctity of the home and the secrecy of correspondence, and freedom from discrimination on account of religion, race, color, language, or political creed. The responsibility placed upon the United Nations for the effective promotion of the universal observance of these and other fundamental freedoms is to be discharged, according to Articles 60 and 68 of the Charter, by the General Assembly, by the Economic and Social Council, and by a Commission on Human Rights. nature and scope of the joint and separate action to be taken by the Members in cooperation with the designated agencies of the Organization are left for determination by events or by subsequent agreements.

The significance of the provisions cited and of the complementary provisions in Articles 1, 13, 55, 62, and 76 of the Charter is to be appraised in the light of the fact that one of the major objects of the Allies in World War II was declared by Mr. Churchill to be "the enthronement of human rights" and the fact that the provision in Article 68 for the establishment of the Commission on Human Rights was hailed by Mr. Stettinius, in his report to the President, as "a promise from this generation to generations yet unborn that this war, fought in the cause of freedom, will not have been fought in vain." No less pertinent, however, is the general principle, laid down in

Article 2 of the Charter, that the United Nations has no constitutional authority "to intervene in matters which are essentially within the jurisdiction of any state." It has been officially declared that the pledge of cooperation with the Organization by joint and separate action in furtherance of respect for human rights and fundamental freedoms is to be fulfilled by Members of the United Nations "without infringing upon their right to order their national affairs according to their own best ability, in their own way, and in accordance with their own political and economic institutions and processes." It is evident that the enthronement of the fundamental freedoms to which Mr. Churchill aspired has not yet been accomplished and that, again in the words of Mr. Stettinius, "hard work extending over many years, careful studies, and long-range planning will be necessary to attain these freedoms throughout the world and to make them secure."

Hard work, careful studies, and long-range planning by the Commission on Human Rights will doubtless be necessary, but they will certainly not be sufficient, of themselves, to bring about universal observance of the fundamental freedoms. The major assignment of the Commission is to provide effective leadership in building up a system of international cooperation by sovereign States which may insist inopportunely upon their right "to order their national affairs . . . in their own way." The Commission, with the support of the Economic and Social Council, will have to work out methods of procedure, acceptable to the sovereign States, for obtaining information as to the manner in which the fundamental freedoms are observed in each of the States. It will have to find some way of making recommendations directly to the States as to action to be taken by them in concrete cases. The members of the Commission cannot be mere experts in the technique of humanitarian endeavor. They should be, in the words of Dr. Lauterpacht, "independent persons of the highest distinction." With high statesmanship and adroit diplomacy, they may be able, with no sanction other than that of public opinion, to lead the United Nations into effective cooperation toward universal observance of human rights and fundamental freedoms.

EDGAR TURLINGTON

THE INTER-AMERICAN SYSTEM AND THE UNITED NATIONS ORGANIZATION

The recent Inter-American Conference at Mexico City created a procedure and set in motion a machinery 1 which will make it possible for the 9th International Conference of American States, to be held at Bogotá in 1946, to complete a total and definitive reorganization of the Inter-American System. This reorganization problem, apart from its technical and purely Inter-American aspect, 2 involves also the further problem of fitting this

¹ Inter-American Conference on Problems of War and Peace, Mexico City, 1945. Final Act, Washington, 1945, Resolution IX, pp. 44-48.

² On this aspect of the reorganization problem see this writer's comment in this JOURNAL, Vol. 39 (1945), pp. 527-533.

reorganized system into the new world-wide international system, the Charter of which has now been drafted by the United Nations Conference held at San Francisco. It is with this second aspect of the reorganization problem that this comment will deal.

The problem of universal as against regional or continental international organization has been much discussed recently, mostly in connection with Art. XXI of the Covenant of the League, and various opinions have been put forward. This writer believes in the necessity of a universal international organization; but universalism does not exclude regionalism, provided that the regional organizations are created for purposes appropriate for regional action and that they are not inconsistent with the norms and principles of the universal organization and are integrated with it.

The first Pan Americanism, that of Bolivar, covered only Spanish America, was regional, political in essence, and yet universalistic in outlook. The United States, on the other hand, followed a policy of continental isolation, as far as politics are concerned. This is the difference which Latin Americans mean, when they contrast "bolivarianismo" and "monroismo."

The present Pan Americanism, created largely at the initiative of the United States, came into being as a strictly continental, essentially non-political, somewhat loose system of inter-American coöperation, restricted, as far as peaceful settlement of international conflicts is concerned, to Inter-American conflicts, trying to avoid the interference with Inter-American affairs by European Powers.

This did not exclude the cooperation with the Hague Conferences of 1899 and 1907. Latin Americans have at all Pan American Conferences since 1899 asserted their universalistic outlook and insisted on their strong ties with Europe. But the representatives of this country too disclaimed any idea of hemispheric isolation.

The problem of universalism vs. regionalism did not become acute as long as there was no universal international organization. But in 1920 the League of Nations was created, essentially on the principle of universalism, mentioning the regional problem only in the extremely ambiguous Art. XXI of the Covenant. The fact that the United States never became a member, whereas all Latin American Republics were, at least at one time, members, made the problem of relations between the Inter-American System and the League more difficult; especially as Latin America entered the League, from enthusiasm and universalism, it is true, but also with the political motive to enhance Latin American prestige on the international stage and to balance Washington with Geneva, to use the League sometimes as a sounding board against "el imperialismo yanqui."

Art. XXI of the Covenant could not, obviously, serve as a basis for a re-

³ O. Stefanovici, Le régionalisme en droit international public, Paris, 1935; José Ramon de Orúe y Arregui, Le régionalisme dans l'organisation internationale, in Hague Academy of International Law, Recueil des Cours, 1935, Tome III, pp. 7–94.

gional decentralization of the League; 4 there is not the slightest doubt that the Inter-American System of 1920-1939 was on a plane of full parity with the League, an organization absolutely independent vis-d-vis Geneva.⁵ But the problem of universalism and regionalism led to difficulties even in non-political matters, as was seen especially at the Montevideo Conference Were some of the Pan American activities really apt for regional The Pan American trade mark system is a failure. What about Pan American attempts at regulating copyright and patents? The codification of international law is certainly a universal task; as a Pan American task it must be restricted to the codification of Inter-American international law, i.e. to the particular international law, binding on the American Republics within the framework of general international law. America cannot legislate for the world by treaties inter se, as the rejection of the "Declaration of Panama" 1939 by all the belligerents of both the camps has clearly shown.

Still more difficult problems arose in the political field. The contradiction between Art. XVI of the Covenant and the neutrality policy of the United States made many treaties, especially at the Buenos Aires Conference 1936, with their saving clause in favor of Art. XVI, of highly doubtful value. The existence of two sets of peace-machinery made it possible for the belligerents in the Chaco War to play one system against the other, with the result that the war continued.

It was in the 'thirties that the problem of the relations between Pan America and the League began to be studied here and in Geneva. A first school of thought, led by Alvarez, wanted to integrate Pan America with the League, by decentralizing the League on a continental basis. A second school of thought wanted to make Pan America completely independent, by transforming the Inter-American System into a full-fledged American League of Nations. Both ideas found strong opposition. Thus, since

- O. Göppert, Der Völkerbund, Stuttgart, 1938, p. 57.
- ¹ J. M. Yepes and Pereira da Silva, Commentaire théorique et pratique du Pacte de la Société des Nations et des Statuts de l'Union Pan Américaine, Paris, 1934, Vol. I, p. 49.
- ⁶ Al. Alverez, La reforme du Pacte sur des bases continentales et régionales, Rapport a la V^e Session de l'Union Juridique Internationale, Paris, 1926.

Balt. Brum, Estatutos de la Asociación de los paises americanos. Anteproyecto del señor Presidente de la República. Boletín del Ministerio de Relaciones Exteriores, Montevideo, February, 1923, pp. 174-195. Juan A. Buero, "The association of American Republics," in Inter-American, February, 1924, pp. 209-218. Ecuador, Ministerio de Relaciones Exteriores, La liga de naciones americanas (postulados ecuadorianos), Quito, 1926. J. M. Yepes, La Société des Nations Américaine, Paris, 1936. Ric. J. Alfaro, "An American League of Nations" in World Affairs, September, 1938, pp. 158-165; Raul d'Ega, "The pros and cons in regard to an Inter-American League of Nations," in same, pp. 166-170. Colombia, Ministerio de Relaciones Exteriores, Proyecto de tratado sobre la creación de una Asociación de naciones americanas, y exposición de motivos, Bogotá, 1938. See the corresponding discussions and resolutions of the Montevideo (1933), Buenos Aires (1936), and Lima (1938) Conferences. See also John P. Humphrey, The Inter-American System. A Canadian View, Toronto, 1942, pp. 227-254. Margaret Ball, The Problem of Inter-American Organization, Stanford, 1944, pp. 66-73. W. Meyer-Lindenberg, El procedimiento inter-americano para consolidar la paz, Bogotá, 1941, pp. 152-158.

1933, a third school of thought, in favor of maintaining the independence of both the organizations, but establishing close coöperation between them,⁸ prevailed.

But the Report ⁹ of the Governing Board of the PAU to the Lima Conference, while recommending coöperation with the League in non-political fields, pointed out that a political coöperation with the League would only be possible through a radical reformation of the Inter-American System. The corresponding Resolution of the Lima Conference, therefore, recommended only close coöperation with the League in non-political fields, "within the limits imposed by their organic statutes and without affecting the integrity of the international organization of the 21 American Republics." The Panama Consultative Meeting 1939 declared that "the Inter-American System is not founded on any spirit of isolation, that the Inter-American principles are free from any selfish purpose of isolation, but are inspired by a deep sense of universal coöperation." ¹⁰

But the question was always only one of coöperation between two independent organizations; even in 1943 the Executive Committee on Post-War Problems of the Governing Board ¹¹ did not go farther. The Inter-American System was reshaped, but even the Havana Convention, 1940, and the Act of Chapultepec, ¹² 1945, foresee independent Pan American action.

In the meantime two interesting experiments in Inter-American activities as regional activities of League of Nations organs had been carried out: first, the American Conferences of National Committees of Intellectual Cooperation ¹³ (Santiago, January, 1939; Havana, November, 1941), which are national committees of the Paris Institute of Intellectual Cooperation, a League organ, and also collaborate with the Division of Intellectual Cooperation of the PAU; second, still more important, the Labor Conferences of American States ¹⁴ (Santiago, 1936; Havana, 1939) as regional conferences

- * See Resolutions II (Montevideo 1933), XXIX (Buenos Aires, 1936), XLI (Lima, 1938). L. of N. XVth Assembly (1934), Plenary Sessions, p. 48; XVIth Assembly (1935), First Commission, pp. 63-67, 79, 93-95; Pl. S, pp. 95, 127. Also F. J. Urrutia, L'oeuvre de la Société des Nations dans ses rapports avec le programme de la 7e Conférence Internationale Américaine, Geneva, 1933. J. M. Yepes in Recueil des Cours, 1934, Tome I, pp. 115-137 and in Revue Sottile (Geneva), Vol. XII (1934), pp. 295-300. Friede in Zeitschrift fur auslândisches öffentliches und Völkerrecht, Berlin, Bd. VI (1936), pp. 122-124. J. G. Guerrero, L'Union Pan Américaine et la Société des Nations, Leyden, 1937.
- Octava Conferencia Internacional Americana. Diario de Sesiones, Lima, 1939, pp. 129-132.
- ¹⁰ "The Americas in developing their organization have in no sense adopted a policy of continental isolation, there is nothing in their regional organization that is inconsistent with world organization": W. Kelchner, "The relations of the Union of American Republics to world organization," in *Department of State Bulletin*, Vol. II, No. 30 (January 20, 1940), p. 62.
 - ¹¹ The Basic Principles of the Inter-American System, PAU, Washington, 1943, p. 11.
 - ¹² Final Act (as cited in note 1), Res. VIII, pp. 40-44.
 - ¹² Revista Peruana de Derecho Internacional, Vol. III, No. 3 (1943), pp. 15-31.
- 14 Res. XXIII of the Montevideo Conference 1933 had envisaged the formation of an Inter-American Labor Institute with headquarters in Buenos Aires. On the Labor Conferences

of the International Labor Organization (Geneva, now Montreal). Also the Inter-American Committee on Social Security ¹⁵ is within the framework of the International Labor Organization.

The pledge of the "Big Three" at their Moscow Conference to set up a universal international organization made the problem of its relation to the Inter-American System very real. This was recognized by the Executive Committee on Post-War Problems of the Governing Board; in its "Observations and Suggestions" 15 the Committee states this problem, but adds that "until the details of the world organization are more clearly revealed, it will be difficult to determine just what these relations will be." The Report underlines American interest in the form the new organization will take, expects that it will be based on the principles of the Inter-American System, especially on "the absolute juridical equality of all states, large and small," takes it for granted that the Inter-American System will continue to function and suggests the calling of a new Consultative Meeting, at which the American governments should "express their collective view on the fundamental principles that should underlie the establishment of a general international organization" and "set forth the bases of the relations that should exist between the Inter-American and the world organization."

These suggestions were not followed, no Consultative Meeting was called; the Dumbarton Oaks Proposals were only the product of the "Big Three" and China, the "sponsoring Powers" of the later Conference at San Francisco, and they were, of course, in decisive points very different, to say the least, from the basic principles of the Inter-American System.

Consultations with the Latin American Republics on the Proposals were, in consequence of the tension between this country and Argentina, carried on wholly outside of the Inter-American System, under which Argentina could not have been legally excluded. They took the form of meetings ¹⁷ on the diplomatic level, held at Blair House, not at the PAU, between the American Secretary of State and the diplomatic representatives of 19 American Republics. A "Committee of Coördination," not a Pan American organ, with Ambassador Carlos Martins of Brazil as Chairman, presented "a report summarizing the views expressed by the American Republics regarding the Dumbarton Oaks Proposals." By January, 1945, the Mexico City Conference, not a Consultative Meeting within the Inter-American System,

of American States see *The International Labour Code*, 1939, Montreal, 1941, Appendix V, pp. 811-847; further: *International Labour Review*, Vol. XXV, pp. 733-741.

¹⁵ Inter-American Conference on Social Security, Santiago, September 10-16, 1942. See *International Labour Review*, Vol. XLVI (1942), pp. 661-691; C. W. Jenks in this JOURNAL, Vol. 37 (1943), pp. 120-126.

¹⁶ Pan American Postwar Organization, Washington, 1944, pp. 24-27.

¹⁷ Meetings of October 26, 1944: Department of State Bulletin, Vol. XI, No. 279 (October 29, 1944), p. 525, of November 9, 1944: the same, No. 281 (November 12, 1944), and of December 29, 1944: the same, No. 288 (December 31, 1944) p. 849.

but a diplomatic conference of the "American governments collaborating in the war" was called.

By that time many comments on the Dumbarton Oaks Proposals, critiques, and proposed amendments had been sent to Washington by Brazil, Chile, Costa Rica, Guatemala, Haiti, Mexico, Panama, Uruguay and Venezuela, ¹⁸ as well as by the Inter-American Juridical Committee at Rio de Janeiro. ¹⁹

We are here not concerned with the Latin American comments and proposals, regarding the Proposals in general, but only with those which deal with the relations between the new international organization and the Inter-American System. In this respect the Proposals 20 contain much more detailed norms than Art. XXI of the Covenant. 11 but deal exclusively with the maintenance of peace and security. As to these "security" aspects, the Proposals declare regional arrangements or agencies compatible with the general system, prescribe that "the Security Council should encourage settlement of disputes through such regional arrangements" and should "where appropriate, utilize such arrangements for enforcement action under its authority," provided they fulfill four basic conditions: 1) these regional agencies must deal with matters "appropriate for regional action"; 2) they and their activities must be consistent with the purposes and principles of the Organization; 3) they must keep the Security Council at all times fully informed; and 4) "No enforcement action should be taken by regional agencies without the authorization of the Security Council."

There is here no longer the question of cooperation, but of integration and subordination; Latin Americans were further preoccupied with the effects of the veto right of the permanent members of the Security Council, as laid down by the Yalta Conference. Comments by Latin America, presented already prior to the Mexico City Conference, made it clear that they wanted the Security Council to abstain from any intervention, if proceedings of regional settlement are in progress, to intervene only if such problems endanger the peace in more than one regional group. It was recognized in this country also that "the question of the relations of the Inter-American System with the general organization will require the most careful and thorough consideration." ²²

Resolution IX of the Mexico City Conference, dealing with the reorganization of the Inter-American System, mentioned this problem only once.

In the second Commission of the Mexico City Conference, dealing with

- ¹⁸ See Handbook for the use of delegates (prepared for the Mexico City Conference by the PAU), Washington, 1945, pp. 107-164.
 ¹⁹ The same, pp. 165-201.
 - ²⁰ Chapter VIII, Section C Regional Arrangements, paragraphs 1-3.
- ²¹ See H. Kelsen, "The Old and the New League," in this JOURNAL, Vol. 39 (1945), pp. 78-79. Herbert Wright, "The Dumbarton Oaks Proposals and the League of Nations Covenant," in Sen. Doc. No. 33, 79th Cong., 1st session, Washington, 1945, pp. 29-31.
- ²² D. V. Sandifer, "Regional aspects of the Dumbarton Oaks Proposals," in *Department of State Bulletin*, Vol. XII, No. 292 (January 28, 1945), pp. 145-147.

the Dumbarton Oaks Proposals, a Report by the Venezuelan Foreign Minister Parra-Pérez, Chairman of the corresponding Sub-Committee, compiled the opinions expressed by 15 Latin American delegations on the Pro-The American delegation found itself in the dilemma 22 of wishing to strengthen the Inter-American System and, at the same time, not to endanger the Proposals, not to weaken the universal competence of the Security Council; as one of the Powers having produced the Proposals, as a sponsoring Power and host of the impending San Francisco Conference this country stood closely identified with the Proposals especially as it was not known how far the U.S.S.R. would be willing to accept amendments. on the proposal of Mexico, a diplomatic solution was found, embodied in Resolution XXX,24 which listed seven points as to amendments on which the Latin American states were agreed, resolved that these points be transmitted to the four Powers represented at Dumbarton Oaks and to all states invited to the San Francisco Conference, and specifically retained full liberty of presenting their view-points to the Conference at San Francisco. Resolution was adopted unanimously, i.e. with the concurrence of the United States, but without committing this country to support Latin American amendments at San Francisco.

The difficulty of relating the Inter-American System to the United Nations system was enhanced by the adoption of the "Act of Chapultepec." Assistant Secretary of State Rockefeller asserted "that there is no conflict in principle or purpose between the Act of Chapultepec and the Dumbarton Oaks Proposals." True, Part III of Resolution VIII stated expressly that the Act of Chapultepec deals with matters appropriate for regional action within this hemisphere and shall be consistent with the purposes and principles of the general international organization, when established. But it contains nothing about the crucial condition of the Proposals, namely the necessity of previous authorization by the Security Council, complicated by the problems of the veto right of the permanent members.

The Latin American point of view as to the independence of the Act of Chapultepec was also endorsed in this country, e.g. by the Recommendation of the American Bar Association, in April, 1945.²⁶

The dilemma of the Mexico City Conference, only "diplomatically" solved, naturally had to come up again at the United Nations Conference on International Organization, held at San Francisco from April 25 to June 26, 1945. The Latin American wish to take the Act of Chapultepec out from supervision by the Security Council led to one of the "crises" of the Con-

²³ "The U. S., because of its relationship to the Dumbarton Oaks Proposals, did not and could not appropriately join with the other participants in the Conference in recommending the suggested changes": Dana G. Munro, *Department of State Bulletin*, Vol. XII, No. 301 (April 1, 1945), p. 529.

²⁴ Final Act, pp. 73–75.

²⁵ Department of State Bulletin, Vol. XII, No. 303 (April 15, 1945), p. 677.

²⁶ American Bar Association Journal, May, 1945, p. 228.

ference, lasting approximately from May 5 to May 21. The dilemma was how to keep Pan America strong and not to weaken the Security Council, especially as in the meantime the Pan Arab League had entered the scene; if the authority of the Security Council is upheld, cannot the veto, e.g. by Russia, nullify the Act of Chapultepec? Is such European interference with an Inter-American conflict desirable and in harmony with the Monroe Doctrine? Or can Pan America go along, without asking the authorization of the Security Council, on the theory that if the Security Council should do something against this defiance of its authority the United States can veto such action?

A number of proposals were made. On May 8, 1945, the United States proposed 27 not to forbid the Security Council, as Latin Americans wanted, to deal with their disputes, but to obtain the authorization of the Security Council for the Inter-American System to deal with its own disputes. Later Australia offered a formula.28 Latin Americans saw a danger not only in the exercise of the veto, but also in simple lack of action by the Security The movement toward a solution was started by the American proposal of May 12,39 trying to combine the Act of Chapultepec and the universal authority of the Security Council by resort to the "inherent right of self-defense" of the American countries. Latin American resistance was overcome by the offer of the President of the United States to negotiate a post-war treaty on the lines of the Act of Chapultepec. On May 15, 1945, the United States could offer the following amendment: "Nothing in this Charter shall abridge the inherent right of self-defense of nations to take action, individually or collectively, against any armed attack, if the Security Council does not act to maintain international peace and security." 80 Against this formula Russia had some objections, 81 but finally accord with her was reached.22

The Charter of the United Nations Organization ³³ (UN) deals with "Regional Arrangements" in Chapter VIII, Articles 52–54. Apart from exceptions concerning regional arrangements against enemy states, which are not of interest here, the text is nearly identical with the Dumbarton Oaks Proposals. ³⁴ New only is Art. 52, Par. 2, according to which members, entering into such regional arrangements shall "make every effort to achieve

²⁷ The New York Times, May 9, 1945, p. 1. ²⁸ The same, May 10, 1945, p. 13.

²⁹ May 13, 1945, p. 1. ³⁰ May 16, 1945, pp. 1, 14. ³¹ May 20, 1945, pp. 1, 22.

²³ May 21, 1945, pp. 1, 10. Department of State Bulletin, Vol. XII, No. 309 (May 27, 1945), pp. 949-950.

Washington, 1945. The Charter is now reprinted in Department of State, Conference Series 74, Washington, 1945. The Charter is now reprinted in Department of State Bulletin, Vol. XII, No. 313 (June 24, 1945), pp. 1119-1134, in this JOURNAL, Vol. 39 (1945), Supplement, pp. 190-210, and in American Bar Association Journal, August, 1945, pp. 388-399.

MUN, Art. 52, Par. 1 reproduces the Proposals, Sec. C, Par. 1, first sentence; Art 53, Par. 2 reproduces Sec. C, Par. 2, second sentence; Art. 53 reproduces Sec. C, Par. 2, Art 54 reproduces Sec. C, Par. 3.

peaceful settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council," although Art. 52, Par. 4 states, that this "in no way impairs the application of Arts. 34 and 35." Thus the right of the Security Council to investigate any dispute or situation, and the right of any member to bring such dispute to the attention of the Security Council or of the General Assembly is preserved, yet American States are left free to bring Inter-American disputes first before the Inter-American agencies. Chapter VI, Art. 33, adds "resort to regional agencies or arrangements"—an addition compared with the Dumbarton Oaks Proposals—to the means by which parties to any dispute, likely to endanger the maintenance of international peace, shall seek a peace-Under Art. 37 the parties are only bound to refer the dispute to the Security Council, if they fail to settle the dispute by resort to regional agencies. Art. 51 35 finally embodies the negotiations, concerning the combination between the universal authority of the Security Council and Pan American action under the Act of Chapultepec, which is not specifically mentioned—a concession to British objections.

The problem of fitting the Inter-American System into the UN was restricted at Mexico City and at San Francisco nearly exclusively to the "security aspect." But there remains a vast problem of integration in many other respects. Will, e.g., the Inter-American Defense Board become a regional sub-committee of the Military Staff Committee of the UN? Will the Inter-American Economic and Social Council become a regional organ of the UN Economic and Social Council? What about the relations between the PAU and the UN Secretariat, between the Division of intellectual Coöperation of the PAU and a corresponding world organization

- ** UN, Art. 51: "Nothing in the present charter shall impair the inherent right of individual or collective self-defense, if an armed attack occurs against a member of the organization, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present charter to take at anytime such action as it may deem necessary in order to maintain or restore international peace and security."
- Media In favor of complete integration already was the Report of the Inter-American Juridical Committee, cited in note 19; equally Sandifer, cited in note 22, at p. 146; also F. Tannenbaum, "The Future of the Inter-American System," in *Pol. Sci. Quarterly*, Vol. XXXIX, 1945, at p. 418.
- ¹⁷ Created by Resolution XXXIX of the Third Consultative Meeting at Rio de Janeiro 1942; provisionally upheld by Resolution IX, point 6, of the Mexico City Conference, 1945; Res. IV of this Conference recommends the early establishment of a Permanent Inter-American Military Organism.
 - 28 UN, Art. 47, Par. 4.
- ¹⁹ Set up provisionally by Res. IX, point 7, of the Mexico City Conference; to be organized permanently by the Bogotá Conference, 1946.
- 40 UNQ, Chapter X, Arts. 61-72. The UN Charter, apart from "regional agencies" speaks of "specialized agencies" (Arts. 57, 63, 70), "having wide international responsibili-

of the UN, between the Pan American Sanitary Bureau and a world health body, and many other problems? 41

The reorganization of the Inter-American System, which has, according to Resolution IX of the Mexico City Conference, to be prepared by the Governing Board of the PAU, and to be carried out by the Conference at Bogotá, in 1946, involves, therefore, many complicated problems concerning the integration of the reorganized Inter-American System with the new United Nations Organization.

JOSEF L. KUNZ

THE CHARTER AND THE CONSTITUTION

A serious question of constitutional law is involved in the implementation of the San Francisco Charter by the United States. Assuming that the Potsdam agreement does not make the San Francisco Charter academic, the Charter provides in Article 43 that all members of the United Nations shall "undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, . . . necessary for the purpose of maintaining international peace and security." As a corollary, Article 45 provides that all members "shall hold immediately available national air-force contingents for combined international enforcement action." ¹

A question was raised during the Senate debate in July, and since then, as to who can speak for the United States and whether these agreements with the Security Council would have to take the form of treaties, requiring the Constitutional approval of two-thirds of the Senate, or whether the agreements must be made by Congress as a whole, voting by simple majority. Some opinion has also been expressed that the President alone could make such an agreement without Congress—at least so far as concerns the use of the limited quota.² The President is supposed to have sent a cable from

ites in economic, social, cultural, educational, health and related fields," which "shall be brought into relationship with the UN." The "Interim Agreement," adopted by the San Francisco Conference (*The New York Times*, June 27, 1945, p. 14), gives to the Preparatory Commission of the UN in London also (Point 4, D) the task of "examining the problems involved in the establishment of the relationship between specialized intergovernmental organizations and agencies and the organization."

^q Walter R. Sharp, "The Inter-American System and the United Nations, in *Foreign Affairs*, Vol. XXIII (1945), pp. 450-464.

¹ It is presumed that this does not conflict with Article 24, by which all members of the United Nations confer on the Security Council "primary responsibility for the maintenance of international peace and security," and agree that the Council "acts on their behalf."

² See Edward S. Corwin, *Cong. Rec.*, August 1, 1945, Appendix, pp. A3994-3998, who, on the authority of the Lend-Lease Act of March 11, 1941, concludes that the Congress can delegate its war-making powers to the President. We may doubt the legality of the Lend-Lease Act in international law and this construction as a matter of Constitutional law. Congress cannot delegate its war-declaring or war-making power. Senator Vandenberg

Potsdam announcing his intention to "submit" any and all agreements of this nature to a majority vote of both Houses.

Before these questions can be intelligently discussed certain assumptions of fact must be made. Since it is agreed that no international police force has been established, each nation's quota, as agreed upon, must retain its own national identity in the combined forces... Thus the United States quota will operate under its own flag, its own officers, its own uniforms, be subject to American orders of the Commander-in-Chief of the Army and Navy, and engage the responsibility of the United States. When, then, it engages in any belligerent action against a proclaimed "aggressor"-all preliminary conditions for such action being assumed to have taken place the United States is involved. If it bombs or shoots up that nation's inhabitants, it is hard to see how the conclusion can be avoided that this is an act of war and the United States is at war, even if the "aggressor" fails to And if he does resist, it is hard to see how the number of troops engaged can be limited to a specific quota. The use of the limited quota The imposition of the national will on a resisting nacommits the nation. tion is now involved, with all its consequences. The same is true of the application of sanctions, a hostile measure which can be equally harmful, if not so violent. To escape this conclusion by calling the imposition "peace enforcement" or any other pleasant name does not alter the fact that it is an This effort to assign to the armed action of the United States some name other than "act of war" or a "state of war" is the crux of the debate whether to give the President and his delegate the unreviewable power to dispose as he wishes of the limited quota, with report to Congress, whereas the employment of additional forces is admittedly an "act of war" requiring the consent of Congress. That the use of the limited quota, probably 5,000 at least in number, is the crucial test of United States committal to war is not universally appreciated.

It has been said that since the President can use the armed forces of the United States for the protection of American citizens abroad, it follows that he can make these agreements or give his consent thereto without the consent of Congress or the Senate. His action in landing troops for the protection of American citizens, described by J. Reuben Clark, Jr., Ellsworth, Offutt, and others, is limited to small, backward or weak countries, where the American citizen or his property is in immediate danger or where the

seems to share Mr. Corwin's view. The "destroyer deal" (1940) and the armed occupation of Iceland and Greenland (1941) cannot be explained legally. As acts of war, they needed the assent of Congress. For the "destroyer deal" this was inferentially given in 1941.

It is uncertain whether this commitment includes only the original agreement or subsequent agreements as to how and where the quota shall be used. The Security Council has power to decree other acts of war, like sanctions, blockades, etc.

^{*}See the list of American interventions (about 150) and a consideration of the Constitutional questions here under discussion in James G. Rogers, World Policing and the Constitution, Boston, 1945, pp. 123. See also, on the practical impossibility of an international police force, Fred Rodell in Time, Sept. 13, 1943, pp. 105–108.

intervention is assented to, where small forces are involved, and where the activity could not possibly lead to war. If the President even faintly suspects that intervention might lead to war, it is his duty, as President Wilson undertook in the Vera Cruz expedition of 1914 against Mexico, to obtain the consent of Congress for his proposed enterprise. Nor is the President here engaged in the administrative task of "executing the laws" or "carrying out" a treaty.

If it is contended, following the McClure school of thought, that the President can make an executive agreement with the Council or that he can use the armed forces in his discretion, the answer is that he has declined to abuse his powers in this way, that this is outside the function of the independent executive agreement, and that he could only make an agreement after Congress has voted and directed him to carry out the resolution of Con-If he undertakes to make the agreement first, he can only "submit" it to the Senate as a treaty. There is no Constitutional provision for the "submission" of his executive agreement for the approval of Congress, so that we must construe his cable as meaning not that he would undertake to make an agreement subject to the approval of Congress, but that he would leave the whole matter to the disposition and determination of the Congress. This limitation need not extend to the President's power to name the United States delegate on the Security Council, as Senator Connally is understood to have suggested, but it would be strange to insist on exclusive presidential power to name so important a diplomatic officer without Senate approval, when all other principal diplomatic officers and members of the Cabinet must be so named. Nor does it seem feasible to limit Congress to the authorization of any excess over the quota, with designation of use, etc. As already observed, the limited quota and its use commits the nation irrevocably, so that Congress must retain full control over all aspects of its size and employment from the very beginning.

It is impossible to reach agreement on all the instances in which American troops have been landed abroad for the protection of American citizens. Clark lists some thirty non-American interventions before 1911, mostly in the weak countries of Asia and the Pacific Islands. He lists forty-three interventions in China from 1911 to 1933. Most of the other interventions (about seventy) occurred in the Caribbean countries and Central America. The interventions were occasioned mostly by local disorders, revolutions, supervising elections, offenses against American citizens (and therefore punitive in nature), the pursuit of pirates and slavers, at the request of the local government, under extraterritoriality or other treaty, a mere demonstration of force, and a variety of other occasions. The number of troops was usually very few, under 100, although about 5,000 were involved in the Boxer troubles in China, and the legation guards in Peking and elsewhere numbered about 1,000 men. When the troops exceeded about 100 in number, the consent of Congress will often be found. Only the interventions in China and a few of those in the Caribbean lasted more than a few days. None of the interventions conducted at Presidential initiative were expected to lead to war, though some authorized by Congress led to a war or an analogous status. We are not now discussing rebellion or invasion, where the President can use the armed forces to defend the nation without the preliminary consent of Congress. Nor could we decline an undeclared war. Congress usually "recognizes" the existence of a state of war, thus throwing the onus of starting war on the other party.

That brings us to the question whether Congress or the Senate should vote the use of American troops and to the further question who determines the occasion, place and magnitude of the American forces to be used. Is it the delegate or the President, the Congress or the treaty-making power, i.e., the President plus two-thirds of the Senate? While there has been an opinion to the effect that after the agreement is made providing for the American quota-in which the President indicates the Congress will share—the determination of the use of the quota is the Security Council's alone, in which the American delegate, however he receives his national instructions, has a If this were true, national sovereignty would vest in the Security Council, since it could vote the United States into war, whereas the uniform opinion was expressed on the floor of the Senate that the United States was not abandoning its sovereignty. Not much credence is given to the view of unlimited Presidential or Council power, which seems contrary to the representations made by Chairman Connally and other spokesmen of the Administration. More weight is attributed to the opinion, expressed by Senator Vandenberg and Mr. Dulles, that the agreement or decision governing the use of American troops was to be effected by treaty, which means a twothirds vote of the Senate. The Department of State representatives at the hearings before the Senate committee failed to challenge this interpretation by Mr. Dulles, and it was doubtless trusted by many Senators. It presupposes an underlying Presidential agreement in each instance in which the Council votes on the use, probably among others, of American troops.

The trouble with this construction is a Constitutional one. tution provides that Congress alone, not the treaty-making power, has the power to declare war and make regulations governing the use of the armed forces of the United States. Up to 1920 it had been uniformly held and believed that a treaty, to be valid, had to conform to the Constitution of the United States. In that year, however, the Supreme Court, by Mr. Justice Holmes, decided the important case of Missouri v. Holland, in which the second Migratory Bird Act of 1918 was sustained, on the ground that it executed a treaty of 1916 with Canada, a treaty made "under the authority of the United States," thus giving the Congress control over a subject, migratory birds, not within the powers conveyed by Article 1, Section 8. Since that decision, it has been assumed that a treaty, if otherwise covering a matter appropriate for foreign relations, need not necessarily conform to the letter of the Constitution, unless prohibited, and that a treaty was like a Constitutional amendment. The present issue compels a reëxamination of Missouri v. Holland. We find that such delegation of the war-making power by treaty might have given pause to Justice Holmes, if it had not in fact changed the decision in Missouri v. Holland. We find that Justice Holmes said:

Geofroy v. Riggs, 1890, 433 U. S. 258.

The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment. 8

Since the power to declare war, however perfunctory it may have become, is expressly reserved to Congress by the Constitution, it may be doubted whether a treaty to this effect would be valid. Moreover, it implies that the President would first make the agreement and then submit it to the Senate, a procedure he has stated he will not follow.

There remains, therefore, only Congress which has power to bind the delegate, and it is believed, unless the form of this government is to be changed, that this method must be followed. If not, the delegate or the President could vote the United States into war, without Congress, and that would be contrary to the Constitution. The delegate can perhaps vote in the negative without Congress, but, it is believed, hardly in the affirmative. A correct procedure—"Constitutional processes"—must be followed. However Congress may be notified of an impending vote in the Security Council, it must act before the President is warranted in executing its instruction by communicating with the delegate. The delay is unavoidable. No agreement is necessary, but the limitations on size, occasion and place of use of American forces must be strictly observed. If the President makes an agreement to this effect, tentative at best, he can no longer "submit" it to the House. He is compelled to make it a treaty, which does not suffice. At best, it requires implementation by Congress before it is Constitutional. Considering the subject in the light of everything that has happened, it would seem that an Act of Congress is necessary 10 to reconcile the Charter with the Constitution of the United States.11

EDWIN BORCHARD

Senator Fulbright: "Within the short space of 5 years this nation has come to recognize the utter futility and absurdity of passive detachment from the affairs of the

⁸ Same, at 433-4.

[•] Professor Corwin seems to differ from this opinion, although he finds no precedent in the landings abroad of American troops to protect American citizens.

There is a recent disposition to "by-pass" the trenty-making power when action by Congress is necessary to effectuate a policy. This was done in the case of the Panama Resolution of 1942-1943, which carried out an undisclosed executive agreement and should have been a treaty; see Herbert Briggs, "Treaties, Executive Agreements, and the Panama Joint Resolution of 1943," in Am. Pol. Sci. Rev., Vol. 37 (1943), p. 686. It was done in 1944 in the case of UNRRA, when a multilateral executive agreement of 1943 was cast in the form of a bill and, after changes by representatives of the Senate and by the Congress, was passed by both Houses; see Herbert Briggs, "The UNRRA Agreement and Congress," this Journal, Vol. 38 (1944), p. 650. It was done in the case of the Bretton Woods Agreement in 1945, also cast in the form of a bill, amended in each house, and passed by both Houses: Cong. Rec., July 19, 1945, p. 7908, and July 20, 1945, p. 8003. It was done in the resolution by which the United States joined the Food and Agricultural Organization: Cong. Rec., July 21, 1945, p. 8043. In all these cases a treaty should have preceded the vote of Congress.

11 See the following two quasi-official statements on American law and policy:

THE EXTENSION OF SOVEREIGN IMMUNITY TO GOVERNMENT-OWNED COMMERCIAL CORPORATIONS

The fact that extensive commercial activities of modern governments are so frequently carried on beyond their borders by government-owned corporations has resulted in an ever expanding reliance upon sovereign immunity when such corporations are sued in foreign courts. This presents a serious problem in the administration of justice. The distinction between agencies of foreign governments engaged in a public function and those which are engaged in purely private commercial transactions has long been recognized. While the definition of these purposes is sometimes difficult in borderline cases, the distinction in general is valid. Thus a corporation for the production or purchase of petroleum exclusively for the supply of the armed forces should be entitled to immunity, while a corporation engaged in the general petroleum business for profit in behalf of a country which had nationalized the industry should not be so entitled.

The distinction between the public and private activities of state agencies which assert a claim to immunity before foreign courts was considered but not directly passed upon by the United States Supreme Court in the case of The Pesaro, and also in the more recent case of The Baja California. Both of these decisions were rendered in libel actions against ships claimed to be owned by a foreign government. In The Baja California case it was not disputed that the ship was owned by the Mexican Government but at the time of the libel it was in the possession of a Mexican corporation which was employing it for private profit. The ship not being in the possession of the government which owned it, there was no direct interference with sovereign right. The general immunity of the government was not denied. Mr. Justice Frankfurter, in his concurring opinion, went further and favored the removal of immunity not only from vessels not in possession of the foreign

world. Regardless of the skeptics, who think people never learn from experience, I believe our people now recognize that neutrality and nonintervention constitute a disastrous foreign policy." (Cong. Rec., July 23, 1945, p. 8097.)

Assistant Secretary of State Berle, November, 1948: "Nor have we any intention to scrap the well-settled policy of non-intervention in the affairs of other states. The policy of non-intervention in other peoples' affairs is and must be the first principle of sound doctrine. Unless this is the settled practice of nations, there can be no principle of sovereign equality among peace-loving states and probably no permanent peace at all." (Department of State Bulletin, Nov. 27, 1943, p. 384, 386.)

If Senator Fulbright's view becomes the official national policy, it can readily be imagined that, without knowing much about the circumstances, the United States will be a party to every war occurring anywhere. This is supposed to make for the peace of the world. There is a considerable opinion urging United States intervention to insure the conformity of foreign domestic governments with American wishes. See Loewenstein, "The Trojan Horse," in *The Nation*, Vol. 159 (1944), p. 235. Criticism in Orton, *The Liberal Tradition*, New Haven, 1945, pp. 231–239. What legal effect the atomic bomb will have is unpredictable.

¹ Berizzi Bros. v. SS. Pesaro, 1926, 271 U. S. 562. See the writer's editorial comment in this JOURNAL, Vol. 21 (1927), p. 742.

² SS. Baja California v. Hoffman, 1945, 89 Law. Ed. Advance Opinions 533.

government but also from those in possession when employed for private profit, unless the department of our own government charged with the conduct of our foreign relations, or Congress, "explicitly asserts that the proper conduct of these relations calls for judicial abstention. Thereby responsibility for the conduct of our foreign relations will be placed where power lies." Under this view, a finding in favor of immunity by the State Department would preclude any inquiry by the courts as to whether the vessel was or was not being employed in carrying out a public function. Although expressed as dictum, this view is in accord with the result reached in two earlier decisions of the United States Supreme Court relating to vessels owned and in the possession of a foreign government but engaged in commercial business for hire. In the language of Chief Justice Stone in one of the cases, such a vessel is nevertheless "a public vessel." 4

This was manifestly not the opinion of the State Department as late as 1927 when, in an action against a French corporation in which the French Government held a part of the capital stock and for which immunity from suit in the United States courts was claimed by that government, the Secretary of State advised the Attorney General that it had long been the view of the Department "that agents of foreign governments engaged in ordinary commercial transactions in the United States enjoyed no privileges or immunities not appertaining to other foreign corporations, agencies and individuals doing business here and should conform to the laws of this country governing such transactions." ⁵

What then is the limit of this power of the political branch of our government to extend immunity from the jurisdiction of our courts? Is there any limit? The question has recently been presented in the Court of Appeals of the State of New York. In the Matter of the United States of Mexico v. Schmuck, a writ of prohibition was issued against a Justice of the New York Supreme Court from taking any further proceedings in an action brought by a New York corporation upon a warrant of attachment against funds in a New York bank, standing in the name of Petroleos Mexicanos, a Mexican corporation. This corporation was organized for the purpose of conducting a commercial enterprise not only in Mexico but abroad. It was authorized to acquire property, to contract for the sale of its products, to borrow money and to grant credits and, among other things, to lease, exploit or operate refineries in foreign countries. The assets of the company consisted in part of properties expropriated by Mexico from various oil enterprises. Mexican company had bought materials from the American company (the

³ The same, at p. 539.

Compania Espanola v. The Navemar, 1938, 303 U. S. 68 at p. 74. Accord: Ex parte Republic of Peru, 1942, 318 U. S. 578.

⁵ G. H. Hackworth, *Digest of International Law*, Vol. II, p. 481, referring to United States v. Deutsches Kalisyndikat Ges., 1929, 31 F. (2d) 199, 202–203.

United States of Mexico v. Schmuck, 1944, 293 N. Y. 264.

plaintiff in the original action) under a contract which provided that any questions or disputes which might occur relating to the subject of the contract "shall be determined by the laws of the State of New York and/or the laws of the United States of America." The Attorney General through the United States Attorney for the district, presented a "Suggestion of Immunity" with respect to Petroleos Mexicanos and its property and attached a letter from the State Department. The suggestion concluded as follows:

By reason of the premises it has been conclusively determined that said *Petroleos Mexicanos* is immune from suit and its property from attachment and this suggestion of immunity having been recognized and allowed by the Executive Branch of the Government, and this suggestion of immunity having been filed pursuant to the directions of the Attorney General of the United States, it is the duty of this Court to dismiss the action against *Petroleos Mexicanos* for want of jurisdiction and to vacate any attachment or other process that may have heretofore been issued in this proceeding against any property of Petroleos Mexicanos.

Confronted with this unequivocal statement, the Court of Appeals felt constrained to accept the fact that the corporation was "conclusively determined" by the executive branch of government to be entitled to enjoy the same immunity from jurisdiction which the Mexican Government would itself enjoy, without further judicial inquiry as to whether, under the facts and the law, the corporation was indeed a governmental agent pursuing a public function. The only issue left open for judicial determination was "whether in this case the evidence shows that the United States of Mexico through its agent consented to be sued"; and the cause was remitted to the lower court for a reference on this sole issue of a consent or waiver of immunity.

The question as to what constitutes a waiver of sovereign immunity, although frequently a difficult one, is not here under consideration. It is of the greatest consequence, however, to draw attention to certain repercussions likely to follow the expansion of the principle from its origin as the immunity enjoyed by a sovereign prince, then extended also to the person of certain state functionaries, then to the property in possession of the sovereign, and now finally to a corporation endowed with fictional personality and engaged in commercial pursuits. We recognize the importance of not embarrassing the political department of government in the conduct of for-We have grave doubt, however, whether the surrender of the eign relations. judicial function to examine the law and the facts upon which such immunity is predicated will result in the improvement of international relations. the contrary, it tends toward a policy of perpetual appearement which may lead to widespread abuse. It lays a burden upon the executive which, in a constitutional democracy, should be more readily borne by the courts through regular judicial processes.

⁷ The same case on reargument, 1945, 294 N. Y. 265.

The question whether sovereign immunity should be extended to agents of foreign states engaged in commercial transactions will mount in importance with the nationalization of industry. In some countries all export and import is already completely in the hands of government. In others, even, in hitherto so-called "capitalistic" countries, certain industries are coming into control and operation by the state. The problem in the United States is, therefore, not a mere question of jurisprudence, Federal or State, but one of high policy as well. In departing from its previously expressed policy the State Department may, we believe, have unwittingly admitted a Trojan horse and taken a step which may lead to serious consequences. The courts have indeed surrendered to the place "where power lies."

It would be interesting to learn whether the Department acts upon a mere ex parte application for immunity after process against the foreign corporation has been instituted, or whether the plaintiff in the court proceedings is given an opportunity to be heard. Otherwise, the plaintiff has been deprived of his right without his day in court, by action which the court now declares to be final. Again, is the action taken by the Department to be affected by the momentary diplomatic relations existing between the United States and the particular foreign nation? Would the action have been the same in the case mentioned, if the foreign state had been Argentina or Spain instead of Mexico?

All these questions are rendered even more perplexing when we contemplate the new economic conditions resulting from the widespread ruin of the war. Cartels may disappear but in their place will come huge corporations for commercial business created and owned by foreign governments. Under the new immunity rule these will be free from process in our courts while native citizens and domestic corporations doing business with such corporations within our own borders will enjoy no such immunity at home or abroad. As there are no international tribunals to which such citizens and corporations may have access, they will be obliged to seek redress before the courts of the particular foreign state, although the transactions occurred within the United States. The threat to free enterprise which all of this implies is only too obvious.

ARTHUR K. KUHN

THE VALUE OF INTERNATIONAL LAW IN OCCUPIED TERRITORY

International law has received some savage blows during the past few years but it has also functioned under many and varied circumstances. Interesting testimony on these points comes from the Island of Guernsey. On May 23, 1945, Jurat John Leale, President of the State Controlling Committee, addressed the statesmen of Guernsey assembled at the Royal Court. His address, which, as distributed in mimeograph by the Committee, occupies twenty-two pages of closely typed foolscap paper, was de-

scribed in the local press as "worthy of the great occasion of liberation after enduring the voke of the enemy for nearly five years."

Jurat Leale had to deal with the occupants on behalf of the people of Guernsey. He gave a detailed account of his efforts to reduce requisitions, prevent deportations, stop the black market, and moderate regulations. Occasionally he moralizes about the propriety of attempts to deal with the occupants and concludes that on the whole it was wisest "realistically to accept a situation which we all deplored but which we were powerless to prevent" (p. 5) and that "getting other people into trouble is a doubtful way of displaying one's patriotism" (p. 8).

Throughout he interlards shrewd comments about German psychology, their inferiority complex, and the best way to deal with them. Sometimes he was successful, sometimes not, but he found international law a solid rock to lean on. Only once was there a near atrocity when in the early days of the occupation the Germans threatened, unless they were satisfied that no one was harboring members of the British army, to shoot twenty of the leading citizens.

Three illustrations will indicate the methods used. A letter concerning a fishing ban got results:

We have received the following letter from the Nebenstelle Guernsey of Feldkommandantur 515:

"Fishing is dangerous at all times in the areas shown on the accompanying sketch, due to the firing of hand weapons. I request you to call the attention of fishermen and other persons concerned in the appropriate manner. The sketch is to be returned to me."

We presume that these instructions originated from your office and with your approval. We regard the matter as one of major importance to the welfare of the population and I should like to take this opportunity of bringing to your notice some of the hardships which the population has suffered and is suffering today.

The Jurat then narrates the hardships arising from the requisitioning of homes, vegetables, hospitals, schools, agricultural land, and bicycles, and the stopping of public wood-cutting. He continues:

It has been our constant endeavour to make the Occupation, to use the words of the first President of the Controlling Committee, a model. The generally excellent behaviour of the local population is, we think, proof that we have not been altogether unsuccessful in achieving our aim.

We hope we have not been unmindful of the difficulties of the Occupying Forces and fully realise that some hardship is inevitable in such a situation as we find ourselves to-day. Whenever we have claimed the protection of the Feldkommandantur of the Hague Convention we have been given the explanation that military necessity is the overriding consideration and sometimes we have received the answer that the island is regarded as a front line position and that in such circumstances the Hague Convention cannot be applied. We do not know on what basis such an explanation is founded.

In the case under consideration, the declaration that the areas indicated on the sketch which accompanied the Feldkommandantur's letter are dangerous at all times to fishermen appears to us to allow of some modification. The areas on the North and South Coasts are at present of particular value as fishing grounds and the arrangements now in force whereby fishermen are warned by the Harbour Guards when shooting practice is taking place have, in all but a few instances, operated suc-With regard to the area on the West Coast, its denial to us at this time comes as a great disappointment, since we are at present in negotiation with the Feldkommandantur and the Harbour Authorities for the opening of a fishing port at Perelle Bay, and the area concerned is one of the principal fishing grounds.

I ought in conclusion to point out to you that there has been a most noticeable increase in the Death Rate and in the number of days lost in sickness during recent months. We are hoping to build up somewhat the health of the population this summer in anticipation of a winter which may prove the severest test of endurance yet imposed on our people and a drastic reduction in the quantity of fish available in place of the increase for which we were hoping cannot but seriously affect our

aim.

You will realise that these are difficult times for us in this island and my approach to you is dictated by my responsibility. I feel it is my duty to make the most earnest appeal to you for a reconsideration of your decision and that before decisions are arrived at you will always give the fullest consideration to the hardships which directly or indirectly may thereby be inflicted on the civilian population.

The reply was of a somewhat vague nature but the ban was later

lifted.

A conversation concerning the requisitioning of a store was unsuccessful:

I can only speak for myself and it may be—though I don't think it is -that I received preferential treatment. The Germans were never ruder to me than I was to them. They may have shouted at one another, but they did not shout at me!

Here is a type of interview which took place. It occurred when we received information that they were going to requisition Young's Store, the only good one remaining to the Essential Commodities Committee.

This took place at Grange Lodge on May 26th, 1943. Messrs. Loveridge and Guillemette were with me and on the German side Major

Kratzer and Inspector Zachau. These are the minutes:

Mr. Leale explained that the Guernsey representatives had called at Grange Lodge to ask for the help of the Feldkommandantur in stopping the requisitioning of Young's Store. He said that this was the main food store under the Essential Commodities Committee's control, and that, in view of the fact that the German authorities had already taken practically every available store in the island, the matter was extremely serious for us.

Major Kratzer said that the store had been promised to the German Authorities in his absence, but that St. George's Hall was offered to us

in return.

Mr. Leale said that St. George's Hall was certainly bigger than Young's, but that it was not a store but a skating rink with many entrances, making it particularly liable to pilferage. In addition it was not vermin proof and bordered on two sides by a timber yard there was constant danger of fire. The recent German order in the papers made it clear that from the German point of view the risk of fire had increased considerably recently.

Major Kratzer said he was very sorry, but the ruling had been made

and Young's Store would have to be vacated.

Mr. Leale said that in that case he was forced to appeal on grounds of International Law. He quoted the Article from the Hague Convention which states: "requisitions . . . shall be in proportion to the resources of the country" and he claimed that in view of the fact that the German Authorities intended taking the last store suitable to our needs, their requisition was definitely out of proportion to our resources.

Major Kratzer said that the reason for vacating St. George's Hall was that if Young's Store was taken instead there would be a saving in the number of guards necessary for the protection of their food supplies.

Mr. Leale said that in that case it appeared to be a military convenience rather than a military necessity which was the cause of the proposed transfer, and he doubted whether in that case they had the right to requisition at all.

Major Kratzer replied that it was necessary to save men everywhere and that the Occupying Forces could requisition what they wanted and had a right to decide themselves what constitutes military necessity.

Mr. Leale reiterated that they only had the right to requisition in

proportion to the resources of the country.

Major Kratzer said that obviously the Occupying Forces would take the better building for themselves and he suggested that if the island were occupied by British Forces they would do likewise.

Mr. Leale claimed that that was not an answer to his contention and Major Kratzer replied that the decision had been taken and the transfer

would be made.

Mr. Leale said that he assumed that he was expected to give away the rights of the Guernsey population under international law and the reply was that he need not give his consent since the transfer was ordered by the Occupying Authorities and not by him.

Mr. Leale said he must consider what else he could do and that he

would certainly put his protest in writing.

Major Kratzer said he was ready to place Mr. Leale's appeal before

the Kommandant if Mr. Leale so desired.

Mr. Leale said he was giving notice of appeal, and asked that the order be suspended until the result of such appeal had been made known to him.

Major Kratzer said that International Law did not apply but that he would agree to suspend the order for the time being if the work of

emptying St. George's Hall had not been carried too far.

He undertook to get in touch with the German Authorities concerned immediately and, whether the work could be stopped or not, to forward the Controlling Committee's protest to the Feldkommandant at the earliest possible date.

The Kommandant was the head man in Jersey. We learned in due

time that our appeal was turned down and so the store was lost.

A protest concerning potato requisitioning near the end of the occupation when food was scarce displayed a note of desperation:

"I have learned with the utmost dismay that you are taking from us 20 tons of potatoes. I can protest, but I cannot prevent you taking them. I can claim that your action is contrary to International Law, but I know you will deny this. I have decided to sink all pride and appeal to you as man to man and in the name of humanity to replace the potatoes you take by other foodstuffs of equivalent food value. If your contention is that your troops must have potatoes, you cannot fail to understand the full implications of what I mean when I say that our people must have food.

"You are German, I am British. It may be a difference of outlook but I cannot reconcile you taking potatoes we so badly need with risking German lives to bring us supplies. Some day this dreadful war will have ended and the occupation have become a matter of history. I think that you know my outlook on life sufficiently well to believe that I speak in all sincerity when I say I would sooner pass into post war days encouraged by the thought of the latter action than soured by the memory

of the former."

When I wrote that letter I thought I might do good by reminding them—in all sincerity—that while their opinion of us might have for us awkward immediate consequences, in the long run, our opinion of them was going to be vastly more important than their opinion of us; that ultimately humanity would judge between us. The letter had not the

slightest effect.

However, our duty became plainer and plainer, it was to emphasize and to emphasize again that the Island simply could not continue to work on its rations: that we were heading straight for a collapse and that for this state of affairs they must accept the responsibility. As we often said to them "we cannot prevent you taking our roots or potatoes, but we want to point out to you without any shadow of doubt or misunderstanding that the consequences of your action are going to be that men simply will not be able to work."

Fortunately for us they made two very bad mistakes just at the time that they were giving us this display of ferocity. They requisitioned 60 tons of beans and, if you please, 1,000 of potatoes. It wasn't so difficult to show the absurdity of these figures. Our reply could hardly be other

than:

"If you take this from us, then that is the end." This brought them, in their turn, against the hard facts of the situation. It showed them an island where no one could work and where chaos reigned.

Generalizing on these and other experiences, Jurat Leale says:

There seems to be an idea prevalent that if only one was firm enough the Germans would give way. I don't know on what basis this theory is founded. I know of no kind of proof that can be brought forward to substantiate it. It assumes that at heart they were a pack of cowards, but even if they were, which isn't proved, it doesn't become any clearer why they should be frightened of anything we could do to them. They were always at the right end of the gun and up to the last few months they were confident beyond a shadow of doubt that they would win the war.

Underestimating one's opponents is a very common form of human error. With individuals it brings its own punishment and is therefore

just foolish. With Governments the punishment is passed on to the community and it is therefore unpardonable. To have underestimated the Germans either in intelligence or courage would merely have brought down more sufferings on the public.

My own view of the matter would be this: the Germans were human enough to prefer a quiet life to one of troubles. I am ready to believe that a realisation of the fact that we would make a fuss when they issued orders that we disliked may have restrained them. This means—apart from anything else—it was probably sound diplomacy periodically to fight really hard against their orders. If you couldn't change the one in dispute, you could hope that you had done something to prevent the next one coming along.

Full marks for wishful thinking should be given to those who pathetically clung to the idea that the Germans would shudder if we showed

our teeth and snarled.

It has been asserted that we should have told the Germans to do their own requisitioning. As a reply may I point to one occasion when, to the regret of those concerned, they did this. A notice declared that any hay not cut by July 5th, 1944, would be confiscated. The upshot of this notice was that the units gave a very liberal interpretation to this permission and some farmers suffered accordingly. A requisition was bad enough, but you knew where you were. To say to them: "You must do your own requisitioning," was tantamount to saying: "Go and help yourselves to as much as you like." Practical experience proved that nothing was to be gained—but much could be lost—by forfeiting any measure of control we were able to exert.

In these cases international law is shown in operation but Jurat Leale does not let it go at that. He formulates his opinion of the value of international law:

But there is such a thing as International Law and I now want to pass on to this subject.

There seems an idea about that International Law is a series of rules which forbid the occupying force from doing certain things which the occupied people deem to be undesirable. But there is much more in it than that. Whatever may have been the intentions of its authors it is not a very precise document when you come to apply it. Again and again one had gone to it hoping for something definite and tangible, only to be disappointed in finding that the statement you seek turns out on examination to be ambiguous. Under the Hague Convention the Occupying force has both rights and responsibilities. The Occupied also have their rights, but they also have their responsibilities—good behaviour, for instance.

The Convention itself is a short document, but with it, in the book of words, is printed a commentary which is much longer, but which has not the same authority. This is written presumably by some eminent British lawyer. Its great value is that it sets the standard of behaviour for British troops when they occupy a country. One could use it to tell the Germans that if they didn't behave like that, well, they were setting a lower standard than the British under similar circumstances were expected to keep. They were always susceptible to arguments of this kind.

To show how ill equipped we were for dealing with our problems, I may say that the Germans had been here for 12 months before we found a copy of the Hague Convention.

In August, 1943, the Germans made our armoury for attack and defence more complete by presenting us with a German commentary on

the Convention. We had it translated and lapped it up.

The Germans ordered growers to grow crops and fishermen to catch fish for them. Both these classes came to see us and with the same question: "Have the Germans the right to force us to work for them in this

way?"

Now, in our commentary on International Law, it is laid down quite clearly that the occupying power has the right to requisition the services of tradesmen such as butchers and bakers. I talked the matter over with Mr. Martel who felt that he could not honestly draw any line between a baker on the one hand and a grower or a fisherman on the other.

I accepted this and so informed those involved.

As you will readily believe these conclusions were unpleasant ones at which to arrive. They seemed unpatriotic. I remember a grower to whom I had given this advice looking at me and his eyes said plainly what his mind was thinking: "You are not much of a Briton." In one sense he was quite right and, truth to tell, I was not feeling particularly heroic at the moment. But that was a very superficial view. In the long run I have no doubt whatsoever that our rights and interests as British people were being safeguarded by sticking to International Law through thick and thin. We followed the example of those who take partners for life. We espoused the Hague Convention "for better for worse, for richer for poorer, in sickness and in health." To have flirted with the Convention would have been to have displayed bad morale and a patriotism based purely on opportunism.

Under International Law the right of the occupying force to requisition goods and services is undeniable. These fall into two main categories: Goods and services generally which may be taken but only in proportion to the resources of the country. There are, however, certain other items like transport which may be seized in their entirety. So when vehicles were taken, though we may have disliked it, there seems to be no doubt that the occupying force could, without any infringement of International Law, have made much bigger inroads into our

transport than they actually did.

Now as to services. No one can be forced to take part in military operations against his own country. What that means is not clearly defined. Our own commentary says that it is not allowable to force men to work on fortifications or entrenchments. As soon as they began to call men up, on reports from Mr. Johns I wrote to the Germans pointing this out to them and asking for an assurance that they were in agreement. There was no answer. Later on we got the German commentary and were surprised to find that, under it, the number of tasks to which men could be set was very limited indeed.

I wrote again and asked that the men concerned be made acquainted with the position. Their reply stated that islanders would not be required to work on fortifications and entrenchments and pointed out that on the back of the calling up notices were "Conditions of Work," which inter alia read as follows: "Service of labour is not demanded for

work of any kind against your own country."

One had to be careful. If one blundered tactlessly the Germans could so easily have replied: "We wouldn't think of forcing anyone to do any work at which you demur, but no one can possibly have any objection to their being sent to France to build bridges or to the Rhine to clear away the debris left by the bombers and we will replace them here by workers from the Continent."

The men forced to work for the Germans were in a difficult position. The Germans held so many trump cards. But even if it is not as full or as specific as one could hope, the Hague Convention is a standard of behaviour during occupations and it provided something on which we could base appeals. I am not going to pretend that we and the Germans agreed often about its interpretation but they were definitely susceptible whenever it was quoted to them. It does provide a check on an Occupying force. They cannot and they do not flout its authority. They did say that it did not apply to certain circumstances to which we claimed it did apply, but they do not openly defy it. They did not except perhaps once say: "We agree that International Law says we can't, but we are going to all the same."

Our position in this island was unique. We were a small community under the German Army, cut off from the rest of the world. The Hague Convention is real and solid. When you have it on your side, you feel less alone. It is something of civilisation which war with all its brutality cannot expel.

Summarizing his experiences of the occupation, Jurat Leale concludes:

In our own Commentary on the Hague Convention we read: "If contrary to the duty of the inhabitants to remain peaceful, hostile acts are committed by individual inhabitants, a belligerent is justified in requiring the aid of the population to prevent their recurrence and in

serious and urgent cases in resorting to reprisals."

The word "reprisal" has an ugly sound and indeed denotes an ugly thing, from the cruder forms of which we have been free. The behaviour of the people has except for a few isolated instances been seemly, sensible, realistic and in harmony with the rules of International Law. Ours has been, indeed, an Occupation in which neither side went to spectacular extremes. When one hears in other places of war criminals and Quislings and the Gestapo as being its chief actors one rather heaves a sigh of relief that ours wasn't that sort of an occupation.

We shall associate the occupation with hunger and cold and homelessness rather than with dramatic arrests and sensational sentences, when one's heart beats faster with apprehension at the very thought of a

German court.

If one were to describe the Occupation as a reign of terror, one might well lay oneself open to a charge of exaggeration. It would be truer to say that though we did not go in daily fear of our lives, we could never escape far from the anxiety arising out of the feeling of insecurity for our homes and our belongings and our liberties. On the whole it would probably be truer to associate it with requisition orders than with the nails on the jack boot. We could never during our waking moments escape from the ugly fact that our island was occupied by German troops, yet I do not think that generally speaking we were sickened by hrutalities nor except in spasmodic outbursts did we hear much of the rattling of the sword of the Prussian bully.

* * * *

I do not know how many Germans passed through our island during the Occupation. Tens, probably hundreds of thousands. What did those men think of us? What kind of reports did they take back with them about the British people who have been living in the islands? I like to feel that those who came here with a respect for the nation to which we belong, found no reason to lose that respect, and those who came with their hearts full of hatred for us had cause to think again. If I am right, I say again that if Guernsey has been able to do but little in winning the war, she may, by her behaviour towards the foes of her country, have made a real contribution to the future peace of the world. That is something of which I, at all events, am not ashamed.

Now that it is possible to see the Occupation as a whole and to get its various phases and events into a true perspective, without allowing the anxieties and worries of the moment to distort the picture, it is our duty to do some hard thinking. Spectators, they say, see most of the game. That is as may be, but probably the most shrewd of all spectators is the player as he, in reflection, lives the game over again when the

final whistle has gone and he is at ease.

What I have in mind is really a very sobering thought. It is this: these islands are the only British territory to have been occupied by German troops. We and we alone of Britishers can from personal experience speak of the time when German soldiers have lived among us. This may well give us the right to be heard when the future relations between our own country and the Reich come to be determined.

* * * * *

From the Occupation of this island by German Forces, grim though the experience has been, we have all doubtless learned salutary lessons. But there is one that I think we have been taught above all others and it is this: Never in the past have we valued liberty as we shall value it in the future. If that thought dominates our political, social and industrial lives then good may yet come out of evil. If because of our trials we realise, as we have never realised before, the meaning of freedom to the human spirit, then those cruel years from 1940 to 1945 will not after all have been wasted, but, on the contrary, out of the wreckage of the weary and seemingly useless years, we shall have rescued and indeed refined that conception of life which alone entitles us to bear the name of men.

The account shows that common sense can do a good deal to adjust a community to the painful situation of military occupation. It also shows that international law is a protection which the occupant will often heed, not from fear of any direct sanction, but from pride, convenience, the opinion of posterity and the uncertainty of the consequences of violation. The value of detailed and precise rules is also emphasized. General principles and standards, useful as they may be for courts, are of little value in situations where international law is administered by civilians and soldiers with no expert knowledge of the subject. The international lawyer, no less than the people of Guernsey, may, however, rejoice to know that international law "is something of civilization which war with all its brutality can not expel."

Quincy Wright

THE LAWS OF WAR AND THE ATOMIC BOMB

The invention and use of the atomic bomb should clarify our theories relative to the application of the principles governing the laws of war. In the case of a great world war, when the role of the few neutral nations is comparatively insignificant, the very nature of the conflict seems to deny the existence of any supreme or overruling law. Nevertheless, even in such a war the contesting group of states do acknowledge and more or less faithfully observe military treaties and agreements. In general also states having recourse to war have observed the convention signed in time of peace by which they agreed to give a previous notice of their intention to attack. The Japanese treachery in this regard is an exception to the modern practice of the civilized world. The states have also observed, save for retaliatory measures, the conventions concluded in anticipation of war regulating the laws of war and the treatment of prisoners.

...When we examine the sanctions of these rules, we find that it lies in the fact that such observance is in the interest of all concerned. Any temporary or incidental advantage to be gained by a disregard of these rules, it is recognized, would be overweighed by the deterioration of the conflict into pure savagery. In other words the laws of war are observed because generally speaking and by and large they help to protect the interests of both parties and promote the efficiency of military operations. Whenever any of the laws of war have been found to be a definite and permanent obstacle to the achievement of the objectives of war the sanction of common interest and the reason for the continuance of the rule has disappeared and the rule has not long been observed. In some cases such a rule does survive for a certain period because public sentiment supports it, and it would not be effective fighting to conduct military operations in defiance of this opinion. opposition of public opinion to the effective application of the rational principles of the laws of war is especially felt in this era, when all governments are swayed and largely controlled by popular sentiment. This aberration and interference with the rational application of the laws of war may disappear when democracies have learned to rely more targely upon the scientifically derived views of their competent experts. In the meantime military commanders, in order to secure necessary governmental support, must take popular sentiment into account. This they must do even when they may understand that the popular views interfere with the effective prosecution of military operations and are of a nature to retard the achievement of the aims for which the war has been undertaken.

There is at present widespread popular support for two irrational and erroneous ideas in regard to the conduct of war. The first of these is the false notion that war is in the nature of a fair fight, in which the contestants should employ only the recognized weapons of warfare. Whenever a nation has discovered or employed a new weapon or means of attack, it has been

regarded by the opponent as an unfair and treacherous act, and this irrational and sentimental attitude will be found to be shared by a certain proportion of the citizens of the innovating nation. So it was when firearms were first introduced, and more recently chivalrous naval commanders condemned the use of red-hot or chained cannon shot. Nevertheless the true principle that any means is legitimate that will conduce to effective fighting has always prevailed in the end to surmount popular outcry and validate the use of each new weapon. Yet an outburst of latent popular sentiment against any new weapon seems even today as likely to occur as ever. Time was perhaps when the fair man-to-man fight principle had social value for the survival of the most effective tribal groups. In any event this ideal must now be regarded as obsolete and a counsel of ignorance. The fallacious sentiment that war is like a fair fight must be considered to be an inhibiting dogma that retards the efficiency of military operations.

The second irrational and sentimental popular opinion relates to the inviolability or immunity of civilians from the effects of military operations. Formerly it was contrary to the dictates of military efficiency to molest or interfere with civilians over and above the exaction of the necessary requisitions and contributions to meet military needs. In actual practice it was found that the best results could be obtained for the troops by paying for these requisitions. Accordingly the obligation to pay or give a receipt was recognized by the Hague Convention as a rule of warfare. Similar considerations explain the practice and, within the limits of military necessity, the obligation net to interfere with the normal administration of occupied territory.

The conditions of modern warfare have, however, greatly weakened, if they have not entirely destroyed, the rational significance of this rule. Formerly a nation was defeated and forced to yield when its relatively small armed forces in the field were overcome. But today the whole nation is in arms and the victory is won by breaking the will of the whole nation to continue the fight. Hence it has become logical to bring pressure to bear on the civilian population in order that they may induce the government to yield. In the case of a totalitarian government, which has such complete control as to make it possible to disregard civilian influence and popular opposition, the enemy may have no choice but to direct operations against the whole nation until the government is forced to yield either from national collapse or in the interest of national survivel. Another consideration subjects the civilians indirectly or incidentally to the dire effects of warfare, namely the fact that practically every phase of national activity contributes to the support and success of modern war. When traffic and industrial centers are bombed, it serves a very direct and important military purpose. The incidental civilian loss and suffering is also of military advantage in that it weakens the enemy's This advantage may be somewhat counterbalanced by the sentimental humanitarian objections referred to above. When each of the contestants may expect to derive the same advantage from an exemption, it would be a case of wanton destruction and needless cruelty not to enter into a self-denying agreement or to observe in common practice a mutually advantageous rule.

The fact that poison gas was not used to any extent in Europe during World War II may have been due to the recognition of such common advantage, or it may have been that a possible allied advantage was foregone in deference to allied sentimental considerations of humanity. Under modern conditions of warfare the ancient rule forbidding the use of poison and the conventions condemning poison gas have become irrational and are likely to prove a trap for the more humane nations. Now that Great Britain and the United States have the greatest naval and commercial fleets it might be in the general interest of humanity to proscribe the construction and use of submarines. For submarines could only be of real importance in a world war, and in such a war surface naval and air-forces would suffice for the conduct of hostilities, without the submarine's destruction of seaborne commerce, so disastrous for postwar recovery. But this elimination of submarines would require the agreement of the three other members of the Big Five. It remains to be seen whether international cooperation has advanced so far that they will be willing to forego the development of this weapon which tends to minimize the advantage of a power that controls the surface and the air. In view of their probable answer it is doubtful if the proposal will even be made.

In view of the frightful efficiency of the bomb and the consequent indiscriminate destruction of civilian life and property, it has aroused a considerable popular opposition. At the same time our military and governmental authorities have given it their support on the ground that it hastens the defeat of the enemy with a consequent saving of the lives of Allied soldiers. The argument might well be made that the bomb had the effect of saving more civilian Japanese lives than it took, and that it saved as well the lives of countless Japanese soldiers. Furthermore it may have saved the very national existence of Japan. It may have been a blessing in disguise to the Japanese nation: the Divine Wind that saved Japan from national hara-kiri.

When the pros and cons are summed up and all the arguments heard, it will be found that, pending a more perfect world organization and union shown to be capable of preventing wars, the laws of war cannot rule out any means effective to secure the ends of war. Nevertheless, when both parties derive an equal advantage from the recognition of a certain exemption or immunity, it will ordinarily be observed. This salutary principle rests upon the common interest of all states and of all humanity to avoid even in war any unnecessary waste or cruelty. The effective application of this rule it-

self rests upon the obligation to observe good faith, even with the enemy. The obligation to observe good faith becomes a primary rule of the laws of war.

If Great Britain, Canada, and the United States can expect to keep the technique of the atom bomb secret, it would hardly be reasonable to expect them to forego this advantage, any more than it would be to expect them to make public any other plan of military defense and the military advantage derived from superior research or administrative organization. If, however, it is considered that other states will soon be as competent to manufacture and employ the bomb, it might be argued that it would be of general advantage for all the states to agree not to use the bomb. Such a proposal is based upon a chimera. In the present stage of international morality, such an agreement would place the most civilized nations of good faith at the mercy of the most unscrupulous and treacherous. Hardly more feasible would be the proposal to place the bomb under the control of an United Nations Commission. There would be the danger that in the course of time the Commission might become a pretorian guard and turn against the richer, self-denying states their own invention. The only way out, the only way to advance the cause of civilization is to continue to perfect the use of atomic, energy, so as to be ready to use it when necessary, as-armeans of defense against aggression. It should serve as a potential instrument to support the authority of international law and the efforts of the United Nations to prevent aggression and to secure cooperation for the common weal of all nations and of all humanity.

It is obvious that the refusal to disclose the secret of the atomic bomb and the results of our subsequent atomic research will arouse widespread hostility and suspicion as to our motives. To allay this we must make our cosmopolitan and liberal motives clear, and see that our actions square with our professions. We must recognize that we are one of the important trustees for coöperative action in the interests of all civilization. We must make real sacrifices in order to aid all peoples to advance along the road of freedom. This may sometimes mean cautious and restrained, interposition on the ground of humanity, through the instrumentality of the United Nations. It must mean every effort on our part to avoid narrow, isolated, nationalistic action. It also will call for patience and toleration of the defects and difficulties of other nations less fortunately situated than ourselves.

In this connection we should consider another aspect of the sanction of the laws of war: the punishment of violations. It is important that we do not employ our victorious force in vengeful action; that we remember that punishment is only justifiable for the reform of the criminal or as a deterrent example. The procedure for the trial of violations of the laws of war should be in strictest conformity with the requirements of due process of law, and we should be as ready to try our own violators as those of the enemy. We should not twist the law or make ad hoc innovations to meet our present

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desires for retribution. We should take into account the emotional strain of bombed civilians who have lost their homes and loved ones through what they erroneously believed were acts in violation of the laws of war. Magnanimity and the conservation of our energies for constructive purposes will protect our true interests and further our world influence better than the postwar prolongation of the pursuit of vindictive retaliation. In as far as possible it may be the part of national wisdom to let the dead past of war atrocities bury its horrors while we move on to better things. Before the bar of history a nation's glory may depend more upon its record for generous magnanimity and understanding charity than upon its wealth and military prowess.

ELLERY C. STOWELL

BASIC ENERGY AND INTERNATIONAL LAW

The effects on international organization and international law of the success which seems to be imminent for the efforts of human beings to release and control for their own uses the basic energy of the universe, hitherto locked up in those intimate cells of the force-stuff which we hypothetically call atoms, can, of course, only be dimly imagined at the present moment. is, however, necessary for students of this field to give attention to that question and to do the best they can to visualize the probable course of developments in this connection. Otherwise they will be caught unprepared by these developments and also appear hopelessly out of touch with the realities of life and the needs of the world community. In the face of recent and imminent developments of both the power of destruction of human life and welfare and also their improvement mere quibbling over sovereign equality and the League of Nations seems criminal infantilism. Tentative estimates of probable developments can always be revised, up or down as may be needed, provided we do not become hysterical in our conjectures at the start, in spite of the greatness of the provocation.

Not the least important aspect of the problem relates to the effects of the discoveries in question ¹ on the normal conditions of human life, the patterns of that life themselves, and international organization and international law in time of peace—to employ the traditional categories for a moment. The achievement of unlimited mechanical power and unlimited facilities for satisfying human wants (what would be called unlimited wealth in a competitive society) would so modify the bases of human relations as to render many present social and political institutions superfluous or impotent. The state is built to a very large extent on the factor of limited supplies of desired goods, especially food and clothing, and power (heat, light, transport, and so on), and upon competition for these goods, and the international com-

¹ We shall assume here that methods have been discovered and devised for releasing unlimited energy from one or more types of matter and for controlling this energy and applying it to human uses; neither of these ends has yet been fully accomplished but both seem more or less imminent.

munity (together with its tool international law) is likewise so built to a very great extent. Elimination of that factor—though the factor of production cost has still to be accurately estimated in the civil exploitation of the atom—must certainly have extensive revolutionary effects. One is tempted to anticipate such profound changes in human society that this modest thing called international law, and even this somewhat breader thing called international organization, will become quite outmoded and be quickly and lightly dropped and forgotten.

This is possible. It has always been obvious to more reflective students of the problem that international law and organization, like all other modalities of federation in the generic sense,2 might be mere temporary make shifts, pending the development of unitary social life and political organization in the world or in any region where they were applied. In so far as the effects of atomic energy reduce the reasons for perpetuating federal arrangements and open the door to early unification of all human society, law, and government, this trend would be very probable. On the other hand, numbers of the reasons for federal arrangements are quite unrelated to physical necessity, scarcity value, or other economic considerations; such are all differences of race, language, religion, and other geo-social culture patterns. Federalism is not necessarily a mere faute-de-mieux but quite possibly the ideal political form whereby general uniformity and local variety can bereconciled on a stable and permanent basis. Even in a Utopia of plentiful food, clothing, shelter, health, and communications there might well be much room and much need for federal forms and for interstate law.

As for the application of atomic energy in a state of war, the atomic bomb, and all of the questions raised in this connection, that is a very different matter and yet here the probable or the reasonably certain implications seem surprisingly—perhaps disappointingly—limited. There is, unfortunately or fortunately, no possibility of any one or more countries keeping secret the formula for the manufacture of such bombs, so that the limitations on their use must, as in the case of other weapons, be those residing in the wealth of the nations and the calculus of probable advantage and disadvantage—well illustrated by the failure of both sides to use gas in the recent It must also be obvious that joint international control must also be extremely difficult for purely technical reasons and above all because of the absence of real international solidarity. Agreements to eliminate or limit such use turn, in absence of an effective community control system, upon such considerations also. Finally it must be remembered that the effect of any new weapon upon the morality and practice of war and social relations in general depends upon the capacity of the ruling classes or groups in society —today the proletariat, and the lower middle class, exploited by the politicians—to appreciate the situation and judge and act accordingly.

² Needless to say, this term is here used in contrast to unitary political organization, not, erroneously, as tending in that direction.

In view of all of these factors the atomic bomb is not certain to have any revolutionary effect on war or on the law of war, although it may just possibly have some such effect. The application of atomic energy in the economic sphere—so to speak—might eliminate many of the factors which make for competition for raw materials, sales markets, and so on, and thus remove many of the causes of war, but this is another matter. be available to all states—the two billion dollar cost was characteristic of the experimental stage—but it may be expected to remain, like other highly developed and expensive weapons, the virtual monopoly of some eight or ten states; it would possibly be worse for humanity if a monopoly by any one or two or three states were possible. It may quite possibly prove, on the other hand, that the atomic bomb will seem so dangerous to the nations that they will eschew its use voluntarily—just as duelling became too dangerous to be fun any longer after the development of the revolver. The danger of serious injury to both parties becoming so much greater than the possibility of any gain to either. . . . Even the dullest and least generous could, it would seem, appreciate such a situation without too great delay.

The implications for present action do not seem too obscure. The probable consequences, in the near future, of the release of the basic energy of the universe without, as yet, perfection of the technique of its control and manipulation do not seem sufficiently revolutionary, for good or for evil, to make either advisable or practicable efforts at revolutionary action in international law and organization, especially in view of the difficulty of achieving popular understanding of the danger in various countries. would seem to be no warrant for scrapping the United Nations Charter and other current projects for organized international activity in the hope of achieving some millenial unitary world state and government. other hand devotees of the international solution for human problems should remember that sudden revolution is possible in both mechanical technique and even in human thought, feeling, and behavior. They should be prepared to take advantage of any opportunity for promotion of world solidarity and common welfare—even at the painful price of seeing their own solution for humanity's problems superseded in favor of a unitary system of world law and government if that seems appropriate. Of one thing we may be sure and that is that all our existing legal and political institutions are soon going to be subjected to tests beside which those endured in 1914-1918 and 1939-1945 will seem mild indeed.

PITMAN B. POTTER

INTERNATIONAL LAW AND PROPOSED FREEDOM OF INFORMATION

There has recently been strong emphasis in certain quarters, particularly in the United States, upon "freedom of information" as a requisite for lasting world peace.\(^1\) Since those concerned for the development of international

¹ See, for example, Kent Copper, "The Right to Know," in Free World, Vol. 10 (Sept., 1945), pp. 53-55.

law cannot well be indifferent to any condition affecting that peace, and since public international agreements have been proposed as a means for the establishment of the freedom advocated, progress in this direction should have significance for specialists in the field of international law as well as for the public generally.

In national societies freedom of speech and the press has usually been associated with modern democratic systems, although there is not universal agreement on the meaning of the terms.² In its international aspects freedom of information has come to be identified especially with the uncensored transmission of news material for dissemination to the public. linked with this in discussion is the so-called "right to listen" to broadcasts from outside the state, the repressive policy of the Axis governments in regard to which is well known. Still other phases of the general subject have to do with state responsibility for government propaganda directed across national frontiers,8 to the use by a state of a privately-owned press as a diplomatic weapon,4 and to the status of foreign journalists who are at the same time public functionaries of their own states.⁵ War-time censorship presents a special situation which need not be considered here. For the purpose of the present comment attention will be restricted to what is commonly referred to as freedom of reporting from the territory of one state to outside territory and to certain developments extending over the past year which have some bearing upon the international establishment of this freedom.

In a resolution approved on September 21, 1944, the United States Congress expressed "its belief in the world-wide right of interchange of news by news-gathering and distributing agencies, whether individual or associate, by any means, without discrimination as to sources, distribution, rates or charges; and that this right should be protected by international compact." ⁶ Some six months later the representatives of twenty American republics at the Inter-American Conference on Problems of War and Peace, held in Mexico City, approved the following resolution:

² The federal Constitution of Switzerland, while guaranteeing liberty of the press provides (Art. 55, par. 2) that les lois cantonales statuent les mesures nécessaires à la répression des abus. . . .

Article 125 of the Constitution of the Union of Soviet Socialist Republics provides that the citizens of the USSR are guaranteed by law freedom of the press. A Soviet reply to statements made by the executive director of the Associated Press in 1945 submitted, *inter alia*, that ". . . Soviet democracy guarantees to the utmost a progressive form of freedom of the press," and that ". . . he is wrong who thinks freedom of press eliminates leadership and guidance. . . . The matter is not in control or guidance but in who is realizing it and in whose interests it is done": article by N. Baltisky, in War and the Working Class, as reproduced in the Washington Post, Jan. 21, 1945, p. 6B.

- *See Lawrence Preuss, "International Responsibility for Hostile Propaganda Against Foreign States," this JOHNAL, Vol. 28 (1934), p. 649.
- Raymond Christinger, Le développement de la presse et son influence sur la responsabilité internationale de l'Etat, Lausanne, 1044, pp. 14-15.
 - ⁶ 90 Cong. Rec. 8155, 8235; 58 Stat. (Pt. 2) 1119.

Whereas:

The American Republics have repeatedly expressed their firm desire to assure a peace that will defend and protect the fundamental rights of man everywhere and permit all peoples to live free from the evils of tyranny, oppression, and slavery;

The progress of mankind depends on the supremacy of truth among

men:

Truth is the enemy of tyranny, which cannot exist where truth prevails, so that those who would erect tyrannies are constrained to attempt its suppression or to raise barriers against it;

Freedom of expression of thought, oral and written, is an essential condition to the development of an active and vigilant public opinion throughout the world to guard against any attempt at aggression;

One of the most pernicious acts against humanity is the method employed by totalitarian governments in isolating their people from the influence of foreign information, depriving them of access to the truth about international affairs, as well as creating obstacles abroad to an exact knowledge of internal conditions in their countries;

It is one of the fundamental lessons of the present world war that there can be no freedom, peace or security where men are not assured of free access to the truth through the various media of public information,

The Inter-American Conference on Problems of War and Peace

Recommends:

1. That the American Republics recognize their essential obligation to guarantee to their people, free and impartial access to sources of information.

2. That, having this guarantee in view, they undertake, upon the conclusion of the war, the earliest possible abandonment of those measures of censorship, and of control over the services of press, motion picture and radio, which have been necessary in wartime to combat the subversive political tactics and espionage activities of the Axis states.

3. That the Governments of the American Republics take measures, individually and in cooperation with one another, to promote a free ex-

change of information among their peoples.

4. That the American Republics, having accepted the principle of free access to information for all, make every effort to the end that when a juridical order in the world is assured, there may be established the principle of free transmission and reception of information, oral or written, published in books or by the press, broadcast by radio or disseminated by any other means, under proper responsibility and without need of previous censorship, as is the case with private correspondence by letter, telegram, or any other means in time of peace.⁷

The military collapse of Germany was followed by declarations concerning freedom of reporting from enemy territories and territory which had been occupied by the enemy. At the Tripartite Conference at Berlin the chief executives of the United States, Great Britain, and the Union of Soviet Socialist Republics, in a statement defining their attitude toward the Polish Provisional Government of National Unity, noted that that Government

¹ Final Act of the Inter-American Conference on Problems of War and Peace, Washington, 1945, pp. 69-70.

had agreed "... that representatives of the Allied press shall enjoy full freedom to report to the world upon developments in Poland before and during the elections." In their statement of common policy for establishing, as soon as possible, the conditions of lasting peace after victory in Europe, the three Governments set forth that they had "no doubt that in view of the changed conditions resulting from the termination of the war in Europe, representatives of the Allied press will enjoy full freedom to report to the world upon developments in Rumania, Bulgaria, Hungary, and Finland." 8

While some war-time censorships have been relaxed, the situation as regards freedom of reporting was described, more than four months after the surrender of Germany and nearly a month after the acceptance of Japan's surrender, as "spotty." President Truman said, in a recent statement, that all representatives of the press, irrespective of origin or nationality, should have equal access to the news at Washington, and at least one member of Congress was reported as saying that he would oppose granting of additional funds to UNRRA unless there is assurance that nations receiving aid will cooperate in the "world free press" movement. 10

Further effort in the Western Hemisphere was projected in September, 1945, when a resolution on freedom of information was presented at the Third Inter-American Communications Conference at Rio de Janeiro. In a statement made in connection with this resolution, Ambassador Berle voiced the United States delegation's belief that it expressed the desire of all the Americas and that recognition of the principle should consolidate progress recently made toward free information in most countries.¹¹

While it appears that progress made toward the realization of freedom of reporting throughout the world has been quite limited, the idea in some form has found a place on the agenda of important international meetings, and has had strong official advocacy by the United States. Resolutions at international conferences have furnished additional emphasis. Customary international law has not in the past placed upon states any duty of permitting freedom of reporting from their respective territories. It remains to be seen whether the new arrangements for maintenance of peace under the Charter of the United Nations will come to be attended by conventional rules by which states will permit such reporting as a matter of international duty.

ROBERT R. WILSON

⁸ U. S. Department of State Bulletin, Vol. 13, No. 319 (Aug. 5, 1945), p. 159.

⁹ New York Times, Sept. 11, 1945, p. 22 (editorial based upon a survey of the situation in various countries). For a statement by Generalissimo Chiang Kai-shek as to the abolition within a specific time limit of the war-time censorship in China, see New York Times, Sept. 4, 1945, p. 3.

 $^{^{10}}$ Washington Post, Aug. 23, 1945, p. 11, and Aug. 27, 1945, p. 7 (statement of Representative Clarence Brown).

¹¹ New York Times, Sept. 9, 1945, Sec. I, p. 26. The resolution, it is reported, envisages adoption of measures by the nations separately and jointly "to develop unrestricted interchange of information between their peoples."

CURRENT NOTES

THE IMMUNITY OF GOVERNMENT-OWNED MERCHANT VESSELS

The recent decision of the Supreme Court of the United States in *The Baja California* case ¹ has helped somewhat to clear up the confusion concerning one of the newest and most unsettled doctrines of International Law. However, it has helped only a little, because the majority of the court seemed either to be not completely cognizant of the basic problem involved, or else to have failed to express an adequate solution.

Briefly, the facts are that a merchant vessel owned by the United Mexican States had apparently been chartered on a bareboat basis to a private Mexican corporation which operated the vessel commercially. The Mexican vessel was the negligent cause of a collision with an American vessel and was subsequently libelled *in rem* in a Federal court for the collision damages. Mexico sought, unsuccessfully, to interpose sovereign immunity as a bar to the suit in admiralty, but was not supported in her contention by our Department of State.

The majority of the Supreme Court held, rather narrowly, that the immunity could not be successfully asserted because, although the vessel was owned by Mexico, it was not in the possession of that Government. In the course of its opinion, the majority of the court employed language which in principle appears to reverse *The Pesaro*,² one of the most unfortunate decisions ever made by the Supreme Court,³ but the majority refrained from actually overruling that earlier case.

In a concurring opinion Mr. Justice Frankfurter, with whom Mr. Justice Black joined, objected to the narrow ground of the decision of the majority and observed that "possession" is too tenuous a distinction. Mr. Justice Frankfurter advocated a broader ground of decision by which jurisdiction would be taken of [merchant?] "vessels owned by foreign governments, however operated, except when the" State Department or "Congress explicitly asserts that the proper conduct of" our foreign "relations calls for judicial abstention."

It is submitted that Justice Frankfurter was more nearly correct in his view of the law than was the majority of the court, and it is further submitted that a logical and reasonable ground of decision would be somewhat more extensive than even that advocated by Mr. Justice Frankfurter.

Certainly the criterion of "possession" will cause difficulties. Had the case of *The Cristobal Colon* been available to Mr. Justice Frankfurter, it

¹ This Journal, Vol. 39 (1945), p. 585.

² Berissi Bros. Co. v. S. S. Pesaro, 271 U. S. 562.

³ For critical comment, see 1 St. John's L. R., p. 5; 40 Harvard L. R., p. 126: this JOURNAL, Vol. 20 (1926), p. 759, at p. 766.

⁴ Below, p. 839.

would have additionally fortified his argument, because in that case there was no actual possession of the wrecked vessel, certainly not by the Spanish Republican Government. Therefore the Supreme Court of Bermuda, sitting in admiralty, decided the case upon the technical basis of the theoretical right to legal possession rather than upon the question of fact as to where the actual possession had lain, which latter test appears to be the only test contemplated by the majority of the United States Supreme Court in *The Baja California* case. Thus a better ratio decidendi than "possession" is obviously necessary.

Government ownership of merchant vessels and the consequent cases arising out of such ownership have all occurred since the First World War. The decisions of the American and foreign courts have been conflicting and illogical. Not infrequently they have been contrary to the practice of the commercial world, and contrary to the opinion of the admiralty bar and of legal scholarship.⁵ Such cases are probably likely to occur more frequently in the future, and, unless they are logically decided, confusion will increase.

It is submitted that only two doctrines need to be correctly understood and applied in order to decide such cases logically.

The first is the legal fiction of sovereignty. As the more brilliant legal writers have shown for upwards of twenty years, the Byzantine and Medieval theories of sovereignty, which conceivably might have possessed some logic when applied to an individual monarch, have long since ceased to make any sense in their forced application to a modern state, the governmental machinery of which is conducted by hundreds of thousands, and even by millions, of officials, none of whom correspond in the remotest degree to the Emperor Justinian or even to Louis XIV. The ancient metaphysical doctrine of sovereignty, therefore, must be abandoned by legal thinkers as obsolete, and in its place substituted the simple practical rule of convenience, by which certain uses of certain kinds of public property for what have traditionally been deemed public uses, will be the only immune uses (save, perhaps, in aggravated or exceptional circumstances), while all other uses of public property, and, particularly, the kinds of public property essentially similar to private property, will not be entitled to any immunity whatever.

Tacitly, at least, this was the rule always applied in admiralty by the courts both of England and of the United States up to the First World War, and the use of this rule made the older law logical to the understanding and sensible in its application. Space prevents reference here to a more extended discussion elsewhere ⁶ of those earlier decisions, but their essential characteristic is that they insist upon a public use of public property and caution against an extension of the doctrine of sovereign immunity to uses of public property which would compete with traditionally private uses. Momentarily, at least, the majority opinion of the Supreme Court touched upon this thought in *The Baja California* case when it referred to the fact that "the

vessel was not in the possession and *public* service of that government" (italics supplied). However, the majority opinion did not return to that correct line of reasoning, except by an inference which may be drawn from a further statement that the courts may decide "whether the vessel when seized was that of a foreign government and was of a character and operated under conditions entitling it to the immunity . . ." (italics supplied).

If, then, the obsolete theories of sovereignty are abandoned, it necessarily follows from what has been said that the second test as to whether or not there should be immunity (lacking a special request by the State Department or a statutory provision) is whether the public property is being used for traditionally public purposes, or in ways which are comparable with, and possibly competitive with, the traditional private uses of private property.

After all, the only sensible reason why an English battleship is immune from American jurisdiction is not because it is the personal property of H. M. George VI (which, in English constitutional practice, it is not ⁷), but because the assertion of ordinary American jurisdiction over the activities of such a public type of vessel within American waters would lead to substantial international discord, on the one hand, and, besides, there is no probable likelihood of conflict between the public activities of such a public vessel and any American private interests.⁸

On the other hand, the interest of the local state is much greater and much more likely to be seriously affected when a government-owned vessel of a private nature (in its build and arrangement) is operated in what is a traditionally private enterprise and which competes with, and may conflict with, similar private enterprises of the local government's private citizens, particularly where such a private type of vessel seeks to enfold itself and its essentially private activities in the immunity of the legal fiction of sovereignty which is both traditionally and practically appropriate only to the public activities of public vessels. There is no less and no more reason or justification for granting such immunity to publicly owned merchant vessels than there would be if the foreign sovereignty were to seek to obtain a similar immunity for similar vessels which were not publicly but privately owned. The nature of the property and the use made of it constitute the proper criteria, not the personality of either the owner or the temporary possessor.

It is submitted that when the question next comes up before the Supreme Court of the United States *The Pesaro* should be overruled explicitly, and the broader and more practical doctrine, which is possibly adumbrated in the opinion of the majority in *The Baja California* case, and which is clarified by the concurring opinion of Mr. Justice Frankfurter, should be advanced to the clear and logical conclusion advocated above.

Frederic R. Sanborn

^{&#}x27;Indeed under English law such vessels are liable for their maritime torts; 1 St. John's L. R., p. 17, n. 25.

⁸ If there is negligent mayigntion by such vessels we will press an American citizen's damage claims: 6 Moore, Digest of International Law, pp. 679, 757.

THE PACT OF THE LEAGUE OF ARAB STATES

The instrument establishing the League of Arab States (jami'at al duwal al'Arabiyyah) was signed, subject to ratification by the signatory states, at Za'faran Palace, in Cairo, on March 22, 1945, by the accredited representatives of six Arab states: Syria, Lebanon, Egypt, Iraq, Saudi Arabia, and Transjordan. Musa al-Alami, delegate of Palestine, was also present at the ceremony but did not sign. The representative of the Imam of Yemen did not reach Cairo in time to sign but the Imam sent a message indicating that he would both sign and ratify.²

The document of twenty articles and three annexes takes the form of a treaty or pact creating a League of Arab States, to which all independent Arab states may belong (Article 1). It lists the objectives of the League: the facilitation of collaboration among the Arab states, the safeguarding of their independence and sovereignty, the solving of common economic and social problems, and such other questions as may arise (Article 2 and Preamble). A Council is set up as the chief organ of the League, with representatives from each member state, each state to have a single vote (Article 3). visions are made for a permanent Secretariat-General with a Secretary-General and staff (Article 12). Permanent headquarters of the League are established at Cairo (Article 10). Special commissions are to be created to study subjects of common interest and to draft agreements to ensure the carrying out of their findings (Article 3). The Pact outlines the functions and procedures of the Council and the Secretariat (Articles 1, 3-6, 11-13, 15, 17, 18). It prohibits the use of force for settlement of disputes among members (Article 5). The procedure to be followed in case of aggression between member states or by a non-member state against a member is stipulated in Articles 5 and 6. Procedure is also provided for voting on various subjects (Articles 5-7, 12, 18, 19), for cooperation with other bodies including non-member Arab states (Annex II) and such international organizations as may be set up to deal with peace and security (Article 3). It provides for the conclusion of treaties among members of the League in keeping with the spirit of the Pact (Articles 9, 17). Procedure for withdrawal or expulsion of members (Article 18) and for amendment and ratification of the Pact are set out (Articles 19, 20).

Annex I regarding Palestine provides that an Arab representative of Palestine, selected by the Council, shall participate in the work of the Council. The annex takes the view that the failure of Palestine to exercise its independence because of reasons beyond its control should not be allowed to interfere with its participation in the League.

Annex II, dealing with the participation of other Arab countries in the League, takes the position that the League should undertake everything in its power to assist the other Arab countries to realize their common objec-

¹ Al Ahram (Cairo), March 23, 1945; Le Progrès Egyptien (Cairo), March 23, 1945. For text see below, Supplement, p. 266.

² Journal d'Egypte (Cairo), March 23, 1945.

tive. As a preliminary step thereto, the League should admit representatives of these countries to participation in the special commissions. Annex III nominates Abdur Rahman Azzam Bey, Egyptian Minister for Arab Affairs, as the first Secretary-General of the League.

Behind the establishment of the Arab League by the Pact have been many years of activity by the Arab peoples on behalf of Arab unity.³ The movement had been particularly stimulated by Mr. Eden's assurances at the Mansion House, on May 29, 1941, that "His Majesty's Government . . . will give their support to any scheme that commands general approval." ⁴

Additional encouragement seems to have been given by Mr. Eden's statement, on February 24, 1943, to the House of Commons that "the British Government would view with sympathy any movement among Arabs to promote their economic, cultural or political unity... the initiative in any scheme would have to come from the Arabs themselves." Although General Nuri as-Said of Iraq had published privately in early 1943 a scheme for Arab unity, it was Nahas Pasha, Prime Minister of Egypt, who first made a public pronouncement looking toward an Arab Union. On March 30, 1943, a statement on his behalf was made in the Egyptian Chamber of Deputies:

Since Mr. Eden made his statement (concerning Arab Union) I have been carefully studying the question, and have found that the best means to attain a satisfactory result would be for the Arab governments to deal with the question themselves. I have therefore come to the conclusion that the Egyptian Government should take up the matter officially and should discover the opinion of the various Arab governments and at what they aim. Having done this, the Egyptian Government should proceed to reconcile the different contradictory views as far as possible, then hold a friendly meeting in Egypt, so that we may work for the Arab Union with a united spirit.

In accordance with this announcement, a series of conferences were arranged in Cairo between Nahas Pasha and various Arab governments: Iraq, July 31-August 6, 1943; Transjordan, August 28-September 1, 1943; Saudi Arabia, October 11-November 2, 1943; Syria, October 26-November 3, 1943; Lebanon, January 9-13, 1944; Yemen, February 6-9, 1944. Following these conferences and other meetings between the interested governments, Nahas Pasha revealed, on July 12, 1944, that he had informed the Arab states that a meeting of the Preparatory Committee would take place

³ For background of Arab unification movement see Bulletin of International News, September 30, 1944, pp. 799-804, Philip Hitti, "Possibility of Union Among the Arab States," in American Historical Review, July, 1943; Philip W. Ireland, ed., The Near East: Problems and Prospects, Chicago, 1942; Col. Stewart F. Newcombe, "A Forecast of Arab Unity," in Journal Royal Central Asian Society, Vol. XXXI, Pt. II (1944); George Antonius, The Arab Awakening, New York, 1939.

^{*} The Times, London, May 30, 1941. * H. of C. Debates, Vol. 387, February 24, 1943.

⁶ Essential details in S. F. Newcombe, as cited.
⁷ Al Ahram, March 31, 1943.

in the near future in Cairo to record views, to complete necessary investigations, and to prepare for a general Arab conference.

The Preparatory Committee convened on September 25, 1944, in Alexandria at the Antoniades Palace, with representatives of Syria, Lebanon, Iraq, Egypt, and Transjordan in attendance. Saudi Arabia's representative, Shaikh Yussuf Yassin, arrived later, while Musa al-Alami was invited to attend as a representative of Palestine. The representative of the Imam of Yemen participated only as an observer in the work of the Committee. Six subcommittees, on political, social, economic, health, cultural, and communications questions, were nominated to work out the possibilities of cooperation between the Arab states. This action and other decisions of the Committee were embodied in a protocol, signed October 7, 1944, usually referred to as the Alexandria Protocol.

Drafting the Pact of the Arab League became the function of the political committee set up by the Alexandria Protocol. Members of the committee, for the most part the Foreign Ministers of the interested states, convened in Cairo on February 14, 1945, and by March 3 a draft had been prepared for submission to the General Arab Congress. The General Congress, composed of representatives of the same six states, convened on March 17. By March 20, 1945, agreement had been reached on the Pact, the signature taking place two days later.

Ratification by the signatories in accordance with Article 20 was initiated by Iraq, when a bill for the purpose was passed unanimously by the Chamber of Deputies on March 28, 1945.¹² The Senate approved on March 29 and the Regent gave his assent on April 1. On March 31 the Pact was brought before the Syrian Parliament which gave its approval the same day, the Foreign Minister announcing that the vote had been unanimous.¹³ Ratification was proclaimed on April 3, 1945, by the President of Syria, Shukri al-Quwatli.¹⁴

The Egyptian Chamber of Deputies voted unanimously for the bill to ratify the Pact, April 2, 1945.¹⁵ The Senate similarly approved on April 4, the bill being signed by King Faruk on April 5, 1945.¹⁶ The Lebanese Chamber of Deputies unanimously ratified the Pact on April 7, 1945. Transjordan ratified the Pact on March 31, 1945.¹⁷ Notification that Ibn Saud had ratified the Pact was given to Abdur Rahman Azzam on April 7,

- ⁸ Al Ahram, September 25, 1944.
 ⁹ Al Moaqattam (Cairo), October 8, 1944.
- ¹⁰ For communiqué of Egyptian Foreign Minister see Journal d'Egypte (Cairo), March 3, 1945.
 - ¹¹ Le Progrès Egyptien, March 18, 1945.
 ¹² Al-Akhbar (Baghdad), March 30, 1945.
- ¹³ The Damascus press (*Alif-Bay*, etc.) indicated, however, that one deputy, Akram al-Hourani, cast his vote against the Pact because, as he explained, it did not take a sufficiently strong position concerning Palestine.
 - Decree No. 151, Republic of Syria, April 3, 1945. "Journal d'Egypte, April 2, 1945.
- ¹⁶ Law No. 1 of 1945, April 5, 1945, Journal Officiel du Gouvernement Egyptien, No. 58, April 7, 1945.
 ¹⁷ Al Misri (Cairo), April 1, 1945.

1945.18 The Prime Minister of Egypt announced, May 11, 1945, that the Imam of Yemen had taken similar action.19

In accordance with Article 20, which provides that "the Pact shall become operative as regards each ratifying state fifteen days after the Secretary-General has received the instruments of ratification from four states," the Pact entered into force on May 10, 1945, four states, Egypt, Transjordan, Saudi Arabia, and Iraq, having deposited their ratifications on or before April 25. The ratification of Iraq reached the office of the Secretary-General in Cairo on this day.³⁰

An indication of the attitude of the American Government toward the League of Arab States was contained in an address delivered by Mr. William Phillips, Special Assistant to the Secretary of State, at a dinner in honor of the Regent of Iraq given in New York on June 2, 1945. On this occasion, after expressing the view that "the determination of the Arab people to reëstablish their independence, and to play a role in world affairs to which they feel themselves entitled by reason of their brilliant past and their talents and industry . . . contributed to their decision recently to form the League of Arab States," Mr. Phillips said: "We welcome the development of Arab coöperation and are confident that the strengthening of the ties between the various Arab countries will not only be to their common benefit but will also enable them to make important and constructive contributions to the great tasks awaiting the United Nations." ²¹

The first extraordinary session of the League met at Cairo on June 4, under the provisions of Articles 6 and 11; to consider the crisis between France and the Republics of Syria and of Lebanon. Following the fourth of the six meetings a communiqué was issued on June 8 stating that the French Government was responsible for the attack and all casualties and damages, that the presence of French forces was contrary to the independence and sovereignty of Syria and Lebanon, that the Council approved the demand for withdrawal of all French forces; that the troupes spéciales should be placed at the disposal of Syria and of Lebanon, and that the Council would take essential steps to check French aggression.²²

Invitations to the signatories and to Musa al-Alami of Palestine to be represented at the initial meeting of the Economic and Agricultural Commissions were issued late in June. Reports of progress in the work of the commissions, which first met on July 15, were issued from time to time.²³

A general review of the problems of the Arab world and the role of the Arab League were expected to form a part of the Agenda of the League at its first regular session, scheduled for October, 1945.

PHILIP W. IRELAND

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¹⁸ New York Times, April 8, 1945.

¹⁹ Journal d'Egypte, May 11, 1945.

¹⁰ Egyptian Gasette, April 25, 1945.

²¹ Department of State Bulletin, June 3, 1945.

² For full communiqué see Journal d'Egypte, June 9, 1945.

²⁸ See Al Ahram and La Bourse Egyptienne, July 16, 1945, Le Progrès Egyptien and Egyptian Mail, September 5, 1945.

THE THIRTIETH ANNIVERSARY OF THE FOUNDATION OF THE GROTIUS SOCIETY

The Grotius Society celebrated in London on the first three days of June, 1945, its thirtieth Anniversary. Lord Simonds recalled at the opening banquet given by the Society how at the time the Society was founded such events occurred as the use of gas in warfare, the sinking of the *Lusitania*, and the prevalence of pessimistic views on the future of international law; the Grotius Society then proclaimed as it still proclaims its faith in international law. The Society had recently discussed the question, "Will international law survive?" "It will survive," said Lord Simonds, "by the force of men of good will, by the force of the Grotius Society, and by the Societies which have similar aims and aspirations; the alternative of survival is death—the death of law and order and justice amongst nations."

The 2nd and 3rd of June were devoted to the Conference on International Law which, as in the preceding year*, was held at Burlington House, London, under the presidency of Sir Cecil Hurst, Vice President of the Permanent Court of International Justice and President of the Society; over one hundred jurists, representing practically all the United Nations, attended the Conference.

"The organization of the future International Authority," a subject dealt with in Dr. Colombos' paper was the first subject of the debates. Hurst, speaking of the San Francisco Conference, expressed the view that it is "the world's last chance to obtain an effective machinery for dealing with international problems." He pointed out that the Charter ought to safeguard the right of self-defence until the Security Council could take effective steps against the aggressor and that there was a need for an international force to suppress aggression. Air Vice-Marshal Bennett, said that justice was necessary to make law effective and expressed concern over the veto right reserved to the five big Powers. Prof. Séfériades (Greece) and some other speakers said that war could only be combatted by justice and that justice could only be maintained by international tribunals. Prof. Goodhart (Oxford) urged the adoption of a realistic view; we have to deal, he said, not with ideals but with actual facts; he agreed that the essential thing is to get the world in some sort of organization—some sort of organization is better than none; as an American he felt that one of the great hopes of the world rested on the fact that now both the United States and Great Britain were strong and we had a better foundation on which to build: "We have to be very careful in a world organization not to block by a paper scheme those who are willing to work and to prevent those who are willing to break the

The second session of the Conference was opened by a paper read by prof. Sir Arnold McNair, Vice Chancellor of Liverpool University, on the "Problems connected with the position of the merchant vessel in private international law with particular reference to the power of requisition." After a

^{*} See this JOURNAL, Vol. 38 (1944), p. 474.

detailed analysis of English and American practice and of text books, he came to the conclusion that the Crown had the right to requisition British merchant ships whether they were in British waters, on the high seas, or in foreign waters, and to enforce that requisition everywhere except in foreign territorial waters, and that, conversely, the British Government and Courts should recognise a corresponding right in other States. Mr. K. S. Carpmael, in initiating the discussion, regretted the inclination of English Courts to allow foreign sovereigns to obtain possession of ships under their flag in English ports by means which were not always in accordance with international policy. The writer of this note disagreed with the doctrine of "quasiterritoriality" of private vessels adopted by the American Judge Hand in the Navemar case; he supported the view expressed by the Scottish Court of Session (Outer House) in the El Condado, a case where the Court refused to recognise the effect of a Spanish decree of requisition of a ship lying in Scottish waters.

"The Limits of the Exclusive Jurisdiction of the State" was the subject of a paper read by Prof. Norman Bentwich at the third session of the Conference. He emphasized the necessity of the extension of the international sphere of jurisdiction and of the modification of the doctrine of exclusive domestic jurisdiction; he suggested developing international law and international administrative organization in order to give effect to the broad purposes of the Atlantic Charter; in consequence the following topics should cease to be matters which by international law remain solely within the jurisdiction of the State concerned: the treatment of the individual citizen and minority groups, including measures of denationalization; the government of dependent people in colonies, protectorates, and mandates; customs and tariff policy; migration and immigration. Prof. Goodhart doubted whether the Great Powers would accept any interference with what was now regarded as their exclusive domain; interference with national jurisdiction by an international authority could only be justifiable in matters which endangered international security.

The closing session was devoted to the Report of the Committee on "International Law and the Rights of the Individual," presided over by Lord Porter. The Committee suggested, as part of the forthcoming peace settlement, the institution of some international machinery on lines analogous to the International Labor Office; this machinery would be charged with the duty of keeping constantly under observation the lot of the individual in the different countries of the world; the agreement establishing the new machinery would define its duties by enumerating the rights of which individuals had been deprived in totalitarian States and which may be said to indicate the "fear" from which "all men in all the lands" should be protected. Prof. Réné Cassin, President of the Conséil d'Etat, said that the Great Powers were successful, during the nineteenth century, in abolishing slavery throughout the world and that the so called "European Concert" effectively

intervened for the amelioration of the lot of Christian people in Turkey; no such intervention was made by the League of Nations against the oppressions of the Nazi regime; at the San Francisco Conference the French Delegation had proposed to insert in the new Charter an exact definition of the rights of the individual and of the right of intervention in the domestic jurisdiction of the States where the treatment of the individuals was likely to endanger international peace. Mr. Harvey Moore said that the lawyers should take the lead in creating a new order; "we should not give these tasks to the executive, but to great judges."

ROMAN K. KURATOWSKI

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ORIGIN OF THE TERM INTERNATIONAL ORGANIZATION

When thinking out the application of the general principles of political science and the art of government to the international field in the years 1914–20, and composing a general text on the subject, the present writer employed the phrase "international organization" without any knowledge whether that phrase had been employed previously or not. It certainly was not in current use in the years 1918–1920 and the present writer did not know of any previous use of it. He consulted the card-catalogue of the Library of Congress in the winter of 1918–1919 and was surprized not to find any such rubric in use there. "International coöperation" was used but the idea of institutionalized coöperation or of international organization was unknown. In view of the position now attained by the term both in common usage and official parlance it may be interesting to explore its origins and history briefly. Corrections or amplifications are invited.*

In his pioneering work entitled *Public International Unions*, published in 1911, Professor Paul S. Reinsch, of the University of Wisconsin, spoke of "cosmopolitanism" and "world organization" and then added, "Yet the realm of international organization is an accomplished fact." For a long time the writer, who discovered this use of the term in the late twenties, regarded it as the first use of the phrase. The two older terms had been quite familiar before Reinsch's time but signified quite different ideas or factual situations from those designated by "international organization"; by this term Reinsch intended, as indicated by the context, to refer to something more concrete and specific than had been meant by the other more

¹ In his Introduction to the Study of International Organization, published in 1922, the writer said (p. 3) that the new phrase had come into common speech in the preceding twenty-five years. This was somewhat of an exaggeration although the usage grew rapidly in the years 1920-1922 and immediately thereafter.

^{*} Mr. George A. Finch, Editor-in-chief of this JOURNAL, has pointed out that he employed the category in question in preparing in 1916-1920, the Analytical Index for Vols. 1-14 (1907-1920) (see p. 151 thereof); he is unaware of having drawn on any particular source. The Recommendations of Habana Concerning International Organization, of 1917, are also to be noted: this JOURNAL, Vol. 14 (1920), p. 301.

² Reinsch, P. S., Public International Unions, 1911, pp. 2 and 4.

familiar terms. "Cosmopolitanism" referred to a culture-pattern, as we might say today, not a formal organization, while "world organization" meant merely some kind of organization of the world, leaving the question of what kind of organization entirely uncertain; a possible meaning of the latter term, namely unitary world organization, or a world state, lay still further in the future than international organization and was not then thought of.

A little further along ^a Professor Reinsch cited, in support of his doctrine of a reconciliation of nationalism and internationalism through international association, "the prospectus of the German association for the mutual understanding among nations" signed by Jellinek, Liszt, Nippold, Piloty, Schücking, and Ullmann, which also suggested that it was "possible to combine with the idea of nationalism that of international organization." Reinsch gave no indication of the source of this document nor its date. The document must obviously date from some time prior to publication of the work by Reinsch, and his public use of the formula in question; it would seem to date from around 1910, the end of a decade which had seen so many striking efforts in the direction of international order and progress. On the other hand the formula would obviously have been used in the manifesto in German and have to be translated when being taken over by Reinsch.

As a matter of fact what very probably was the original of the manifesto appears in the May, 1910, number of Die Friedens-Warte, signed by the persons named. But here the document—called an Aufruf (call; summons) —does not contain the phrase in question in the passage quoted by Reinsch but uses the term "international idea" (den internationalen (Gedanken)instead. Whether or not an English version of the Aufruf was issued which contained the variant version we do not know; it is possible that Reinsch himself simply took liberties in the translation. Still more interesting are the facts that the Aufruf did use the phrase "international organization" later 5 (calling for the further development of beginnings already made in that direction), though it carried in its title merely a mild reference to "international understanding" (internationaler Verständigung). is to be noted that this very phrase had formed the heart of the subtitle of Die Friedens-Warte through 1908 (Zeitschrift für internationale Verständigung) when (in 1909) it had changed to zwischenstaatliche Organisation (Zeitschrift für), without explanation, and that the Aufruf was preceded, in the May, 1910, issue, by an article entitled Der Progress der internationaler Organisation, by Wilhelm Ostwald, not mentioned in the Aufruf, an article based, be it said, on a somewhat strained analogy between the physical sciences and social evolution, and followed 7 by an article from the pen of the

⁸ P. 10.

^{*}Die Friedens-Warte, May, 1910, p. 84, col. 1. For much of the material in this note, specifically the reference to Lorimer, below, I am indebted to my friend and former colleague Professor Hans Wehberg, scholarly and indefatigable editor of Friedens-Warte now since many years.

*Same, col. 2.

*P. 89.

sworn internationalist, then editor of *Die Friedens-Warte*, Alfred H. Fried, entitled *Der Bismarckismus wider die internationale Organisation*. In sum, the transition from the vaguer and less conscious terminology of the 1900's was giving way at this time among German and Austrian scholars, to a more specific and deliberate reference to "international organization."

One of the leading figures in this transition was Walther Schücking, later a judge on the Permanent Court of International Justice. In fact it is to the writings of Schücking in 1907 and 1908—an article of 1907 entitled Modernes Weltburgertum ⁸ and another of 1908 and 1909 entitled L'Organisation Internationale or Die Organisation der Welt ⁹ embodying ideas expressed in a lecture given in Vienna on October 30, 1907, ¹⁰—that we can trace the earliest modern use of the phrase "international organisation." It appears repeatedly in these writings and probably passed over from Schücking to the Friedens-Warte by the paths already indicated. Indeed it might well seem that Schücking had been more responsible than anyone else in this critical period for stabilizing and launching in the world of scholarly thought the concept and verbal formula "international organization."

This, however, was not the first time that the formula had appeared. Indeed it had appeared both in English and French at least a generation earlier, in both cases from the pen of the Scotch jurist James Lorimer. This somewhat religious and mystical seer, but practical jurist as well, delivered an address before the Royal Academy in Edinburgh on May 18, 1867, entitled: "On the Application of the Principle of Relative, or Proportional, Equality to International Organization." In 1871 Lorimer published an article in the Revue de Droit International et de Législation Comparée entitled Proposition d'un Congrés International basé sur le Principe de facto, in which he again utilized the idea and the formula "international organization." In a letter to Thomas Willing Balch of February 10, 1874, he once more employs the term. Finally he employed the idea and the term freely in his Institutes of the Law of Nations, especially in the second volume of that

⁸ Die Zukunft, edited by Maximilian Harden, August 17, 1907, cited in correspondence by Wehberg.

⁹ In French in Revue Générale de Droit Internationale Publique, Vol. XV (1908), p. 1, and in German in Staatsrechtliche Abhandlungen, Festgabe für Paul Laband, Tübingen, 1908, p. 535; the German version is greatly expanded in comparison with the French although they are obviously more or less the same paper.

¹⁰ Juristische Blätter, publication of the Juristiche Gesellschaft zu Wien, Vol. 36, No. 44 (Nov. 4, 1907), p. 521. For this reference I am indebted to my friend and former colleague Professor Kelsen, sometime member of the Juristiche Gesellschaft.

¹¹ Transactions of the Royal Society of Edinburgh, Vol. XXIV (1867), p. 557, cited in Jacob ter Meulen, *Der Gedanks der Internationalen Organisation*, 1917–1940, Vol. II, Pt. 2, p. 207, note 2. On Lorimer's position in the field of international law and organization in general see Jenks, C. W., "The Significance today of Lorimer's Ultimate Problem of International Jurisprudence," in Grotius Society, *Transactions*, Vol. 26 (1940), p. 35.

¹² Revue de Droit International et de Législation Comparée, Vol. III (1871), p. 1, at p. 4.

¹³ Thomas Willing Balch, International Courts of Arbitration, 1912 (fourth edition), pp. 31, 41.

work, which appeared in 1884.¹⁴ Lorimer seems to have been the inventor of the term "international organization."

Lorimer's writings were well known on the Continent. His principal work was translated into French by Nys and published in Brussels in 1885, 15 and the section dealing with problems of the future had already appeared in French in the Revue de Droit International et de Législation Comparée. 16 It is entirely possible and even probable that it was his use of the term which was taken up a generation later by Schücking and his colleagues in Germany and Austria.

A few supplementary questions suggest themselves. Is any importance to be attached to the use of this specific idea and this specific term? Is it not probable that others had employed the idea and term "international organization" before Lorimer? Was the idea not present earlier in any event? Why did the concept and the phrase, though launched in Great Britain in 1867 and on the Continent in 1871, not "catch on" and make its way in the world? Why did it enjoy a different fate after 1919? The answer to the first question is found in those which must be given to the other four. It does not seem that any of the dozens or score of persons who had thought about the problem of international order prior to Lorimer had hit upon the exact solution thereof or used the precise formula which we are discussing.16 They had talked about peace and justice, and order and humanity and many other things, including those mentioned at the beginning of this paper, but not the precise and supremely appropriate combination of elements which is "international organization," although that solution of the international problem now, in view of the selective victory of that concept, seems superbly obvious in retrospect. Even references to a congress of nations or a federation or confederation of the world missed the general idea.17 Not only was the magic phrase not present but the exact idea was not present. And the reason was that the world of nations and the nations of the world were not ready for it. So much so that when a precocious seer launched the term it failed to take hold, even among scholars. Even when repeated in Germany forty years later it failed to make its impress and another decade and more, and much educational agony, were needed before the solution became clear and was perceived. Indeed it became obvious and admitted then (in the 1920's) only because in the League effort adequate emphasis was placed, beyond sentiments and ideas and principles and rules of law, upon permanent institutions, organization, and the structure, albeit rudimentary, of the international federal state.

PITMAN B. POTTER

¹⁴ The Institutes of the Law of Nations, Vol. II, 1884, pp. 190, 216, etc.

¹⁸ Under the title *Principes de Droit International*; published also in Paris.

¹⁶ Lorimer's phrase was frequently used by Constantin Franz in 1878-82 (Föderalismus als . . . Prinzip für . . . Internationale Organization, 1879): ter Meulen, Vol. II, Pt. 2, p. 15, and correspondence with Dr. Laslo Ledermann, Geneva.

¹⁷ Lorimer even proposed "International Government": work cited, p. 279.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD MAY 16-AUGUST 15, 1945

(Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: B. I. N., Bulletin of International News; C. I. E. D., Chronology of International Events and Documents, Royal Institute of International Affairs; C. S. Monitor, Christian Science Monitor; Cmd., Great Britain Parliamentary Papers by Command; Cong. Rec., Congressional Record; D. S. B., Department of State Bulletin; Ex. Agr. Ser., U. S. Executive Agreement Series; G. B. M. S., Great Britain Miscellaneous Series; G. B. T. S., Great Britain Treaty Series; P. A. U., Pan American Union Bulletin; U. S. T. S., U. S. Treaty Series.

September, 1944

- 18-November 2 Optum. Russia and the United States exchanged notes concerning limitation of the production of opium. Texts: D. S. B., July 22, 1945, pp. 129-131.
- 22-May 14, 1945 Optum. Turkey and the United States exchanged notes concerning limitation of the production of opium. Texts: D. S. B., July 8, 1945, pp. 63-69.

May, 1945

- 4 Great Britain—Turkey. Signed trade and payments agreement in London. London Times, May 5, 1945, p. 3; D. S. B., Aug. 5, 1945, p. 191. Text: Turkey no. 1 (1945), Cmd. 6632. This agreement abrogates the agreement of Feb. 3, 1940, as extended.
- 11-18 PRESS CONGRESS. Third Inter-American Press Congress was held at Caracas, Venezuela, having been postponed from June, 1944. P. A. U., August, 1945, pp. 444-445. The 4th Congress will be held in Colombia.
- DENMARK—Japan. Denmark severed diplomatic relations. N. Y. Times, May 19, 1945, p. 7.
- 18 CHINESE RECOGNITION. Denmark recognized the Government of Generalissimo Chiang Kai-shek. N. Y. Times, May 19, 1945, p. 7.
- 19-June 20 TRIESTE. Field-Marshal Sir Harold Alexander issued statement May 19 on the occupation of the city by Marshal Tito. Text: N. Y. Times, May 20, 1945, p. 17. Text of Marshal Tito's reply to the United States and Great Britain relative to Yugoslav claims to Trieste and Istria: p. 16. Both texts: London Times, May 21, 1945, p. 3. It was announced May 22 that Marshal Tito had accepted "in principle" the Allies' position. N. Y. Times, May 23, 1945, pp. 1, 4. Department of State announced signature of an agreement providing for a temporary military administration under Allied control of the province of Venezia Giulia, including Trieste. N. Y. Times, June 10, 1945, p. 1. Text of agreement: p. 6; D. S. B., June 10, 1945, p. 1050, London Times, June 11, 1945, p. 4. Text of Yugoslav Government's letter and declaration: D. S. B., June 17, 1945, p. 1096. Exact boundary lines of Marshal Tito's occupation sone were agreed to on June 15. N. Y. Times, June 16, 1945, p. 7. The United States, Great Britain and Yugoslavia signed military agreement partitioning the Venezia Giulia area of prewar northeastern Italy. The agreement set up a "Blue Line" for administrative purposes. N. Y. Times, June 21, 1945, p. 2; Free Europe (London) June 29, 1945, p. 200.

- 21 MIKOLAJCZYK, STANISLAW. Former Premier of the Polish Government in London, expressed view that solution of Polish-Soviet relations could be found and that the London regime should resign. London Times, May 22, 1945, p. 6.
- 21-July 22 Lebanon and Syria. Negotiations with France were broken off May 21 by the Levantine States because of French desire for special rights in the area. N.Y. Times, May 22, 1945, pp. 1, 5. On May 22 Syria demanded removal of French troops. N. Y. Times, May 23, 1945, p. 4. Excerpts from joint Lebanese-Syrian statement of May 23: N. Y. Times, May 24, 1945, p. 5. French official statement of May 27 declared arrival of Senegalese replacement troops had been the cause of the crisis. N. Y. Times, May 28, 1945, p. 5. Text of United States note to French Provisional Government of May 28: N. Y. Times, June 1, 1945, p. 5; D. S. B., June 3, 1945, pp. 1013-1014. Text of French statement of June 1: London Times, June 2, 1945, p. 4. Prime Minister Churchill in message to General de Gaulle stated that British troops had been ordered to intervene in order to prevent further trouble in Syria. Text of message: N. Y. Times, June 1, 1945, p. 5. Text of Mr. Churchill's speech in House of Commons on June 5 denying French implication that British interference had provoked the uprising: N. Y. Times, June 6, 1945, p. 12; London Times, June 6, 1945, p. 4. France was requested on June 7 to remove troops. N. Y. Times, June 8, 1945, p. 5. Text of General de Gaulle's address of June 19: Free France (N. Y.), July 1, 1945, pp. 17-21. Partial text of statement of June 22, issued by French press agency concerning British policy: London Times, June 25, 1945, p. 3. France started the evacuation of barracks in Syria on July 22. C. I. E. D., July 1-22, 1945, pp. 51-52.
- 22-August 10 War Declarations. The following declarations against Japan were made: Ecuador, May 22. N. Y. Times, May 23, 1945, p. 4. Brazil, June 6. D. S. B., June 10, 1945, p. 1060. Italy, July 15. London Times, July 16, 1945, p. 8. Russia, August 8, effective August 9. N. Y. Times, Aug. 9, 1945, p. 1. Text: p. 3; Russian Embassy Information Bulletin (Washington), Aug. 11, 1945, p. 1; London Times, Aug. 9, 1945, p. 4. Mongolian Peoples Republic, August 10. N. Y. Times, Aug. 11, 1945, p. 2.
- 23 GEEMAN PROPERTY. United States, acting as trustee for the Allied Governments assuming power in Germany, formally took over the property of the German Embassy, papers, etc., in Washington. D. S. B., May 27, 1945, p. 954.
- 23 GERMANY. The Third Reich ended today, with its dissolution by the Allies and the arrest of the High Command and General Staff. N. Y. Times, May 24, 1945, pp. 1, 9.
- 23/24 GREAT BRITAIN. The Coalition Government headed by Winston Churchill resigned May 23. N. Y. Times, May 24, 1945, p. 1. "Caretaker" Government took office May 24. N. Y. Times, May 25, 1945, pp. 1, 7; London Times, May 26, 1945, p. 4.
- AUSTRIA. Establishment of the British and American military government for joint control of Austria was proclaimed by Field-Marshal Sir Harold Alexander. N. Y. Times, May 25, 1945, pp. 1, 4. Texts of proclamations: London Times, May 25, 1945, p. 3.
- 24/June 25 The Netherlands. The Government was formally reestablished at The Hague, when the Cabinet convened there for the first time in about five years. N. Y. Times, May 25, 1945, p. 4. A new Cabinet was sworn in on June 25. Members: London Times, June 25, 1945, p. 3; Netherlands News (N. Y.), July 1, 1945, p. 178.
- 28 GREAT BRITAIN—IRAQ. Signed exchange agreement at Baghdad. Text: Iraq no. 1 (1945), Cmd. 6646.

- 29 CHINA—THE NETHERLANDS. Signed treaty relinquishing extraterritorial rights in China, and exchanged notes concerning the settlement of these and related matters. N. Y. Times, May 31, 1945, p. 2; London Times, May 31, 1945, p. 4.
- Norway (in exile)—United States. Effected agreement by exchange of notes in Washington concerning certain problems of marine transportation and litigation. D. S. B., July 8, 1945, p. 71.
- 30/August 8 Iran. Announcement was made May 30 that Iran had asked for the evacuation of British, American and Soviet troops, since the European phase of the war had ended. N. Y. Times, May 31, 1945, p. 1; B. I. N., June 9, 1945, p. 531. The Iranian Foreign Minister announced on August 8 that British and Russian forces would be withdrawn at once. N. Y. Times, Aug. 9, 1945, p. 12.
- 31-June 4 United Nations Commission for the Investigation of War Crimes. Representatives of 16 nations met in London without announcing any recommendations. N. Y. Times, June 5, 1945, p. 10.

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- 2 ARGENTINA—BOLIVIA. Effected agreement by exchange of notes at La Paz, regarding railroad, highway and oil-pipeline construction, and the development of southern Bolivian oilfields. It is intended to extend and amplify their treaties of Feb. 10, 1941 and Feb. 6, 1942. Summary of 9 points: D. S. B., Aug. 5, 1945, pp. 199–200.
- 4 ARAB LEAGUE. Council delegates from 6 states opened conference at Cairo. N. Y. Times, June 5, 1945, p. 6; London Times, June 5, 1945, p. 4.
- 5-August 15 German Occupation. General Eisenhower, Field-Marshal Montgomery, Gen. de Lattre de Tassigny and Marshal Zhukov signed at Berlin a joint declaration announcing assumption of supreme authority in Germany by their respective Governments. N. Y. Times, June 6, 1945, p. 1. Texts of 3 statements on consultations with other Governments of the United Nations, occupation zones, control machinery in Germany, and the Declaration: p. 10; D. S. B., June 10, 1945, pp. 1051-1055; Russian Embassy Information Bulletin (Washington), June 16, 1945, pp. 1-5; this JOURNAL, Supplement, Vol. 39 (1945), pp. 171-178. Text of Declaration and statement on machinery and zones of occupation: London Times, June 6, 1945, p. 3. French zone of occupation delimited. London Times, June 25, 1945, p. 4. The Allied Control Council for Germany held its first official meeting in Berlin on July 30. Text of statement issued after the meeting: London Times, July 31, 1945, p. 4. The United States, Great Britain, Soviet Russia and France officially announced the boundaries of their respective zones in Germany August 15. Map: N. Y. Times, Aug. 16, 1945, p. 9; D. S. B., Aug. 19, 1945, p. 275.
- 6/August 15 International Civil Aviation Organization (Provisional). Edward Warner was named United States' delegate on the Council June 6. D. S. B., June 10, 1945, p. 1057. The Interim Council met in Montreal with 17 members present. N. Y. Times, Aug. 16, 1945, p. 10. List of nations represented: N. Y. Times, Aug. 19, 1945, p. 18.
- 6-28 United Nations Conference on International Organization. Admitted Denmark to participation in the Conference on June 6. D. S. B., June 10, 1945, pp. 1048-1049. Voted June 7 that the name of the new organization should be the United Nations. N. Y. Times, June 8, 1945, p. 1. Approved proposal June 19 to debar Spain from membership in the United Nations as long as the regime of General Franco shall remain in power. N. Y. Times, June 20, 1945, p. 14. The Conference closed June 26 with the signature of the Charter. N. Y. Times, June 27, 1945, p. 1. Text of President Truman's address at final session: p. 10; Cong. Rec. (daily), June 29, 1945, pp. 7087-7088. Texts of addresses by representatives of China, France, Great Britain, Russia and the United States: N. Y. Times, June 27,

- 1945, pp. 13-14. Text of agreement to set up a Preparatory Commission to act ad interim: p. 14. Texts of Charter and agreement: this JOURNAL, Vol. 39 (1945), Supplement, p. 190. D. S. B., June 24, 1945, pp. 1119-1134; 1142-1143. Text of Statute for International Court of Justice: pp. 1134-1142; this JOURNAL, Vol. 39 (1945), Supplement, p. 215. Texts of President's address, Charter, agreement, International Court Statute: S. Doc. 70. Text of Report to the President on the Results of the Conference by the Chairman of the United States Delegation: Dept. of State. Conference Ser. no. 71. Facsimile of the Charter, Statute, and interim arrangements in 5 languages: Dept. of State. Conference Ser. no. 76.
- 7/20 Norway. King Haakon arrived in Oslo June 7. N. Y. Times, June 8, 1945, p. 9. On June 12 the Cabinet resigned. N. Y. Times, June 13, 1945, p. 4. Einer Gerhardsen announced formation of a new Cabinet on June 20. N. Y. Times, June 21, 1945, p. 4. Members: London Times, June 25, 1945, p. 3.
- 8 Korea—United States. Text of statement made by Acting Secretary of State Grew on United States policy with respect to Korea: D. S. B., June 10, 1945, pp. 1058–1059.
- 9 EL Salvador—United States. By exchange of notes agreed upon a cooperative education program. The agreement, effective on signature, will remain in force 3 years. D. S. B., July 15, 1945, p. 100.
- 12 Poland (Provisional Government). Text of statement issued by the White House on meeting to consider the Polish reorganization problem, to be held in Moscow. on June 15, with Foreign Commissar Molotoff and British and United States Ambassadors to Russia participating. This meeting was authorized by the Crimea Conference. N. Y. Times, July 13, 1945, p. 17.
- GREAT BRITAIN—INDIA. Statement of policy by the Secretary of State for India was issued. Text: London Times, June 15, 1945, p. 4; N. Y. Times, June 15, 1945, p. 1; Cmd. 6652.
- 14-16 Food Conference. Was held in London to consider problems in Denmark, Norway, Belgium, Luxembourg and other countries. London Times, June 14, 1945, p. 4. List of 12 countries represented: B. I. N., June 23, 1945, p. 571.
- NORWAY—SWEDEN. Signed three financial agreements at Oslo. N. Y. Times, June 16, 1945, p. 5.
- 16/July 3 Great Britain—West Indies. British Colonial Secretary issued text of dispatch recently sent to governors of the 8 West Indian colonies, concerning federation of these colonics and eventual self-government within the British Commonwealth. B. I. N., June 23, 1945, p. 571. Summary and excerpts: London Times, June 18, 1945, p. 3. The House of Assembly of the Bahamas rejected on July 3 the proposal for federation of British Caribbean colonies. N. Y. Times, July 4, 1945, p. 4.
- 22-28 International Labor Organization. The Governing Body met in Ottawa. N. Y. Times, June 24, 1945, p. 5; C. S. Monitor, June 28, 1945, p. 3. Announced invitation had been extended to Russia in 1943 to return to membership. N. Y. Times, June 27, 1945, p. 19.
- 23 POLAND (Provisional Government). Moscow radio announced that a complete agreement had been reached among the Polish groups, meeting in Moscow, on the formation of a Government of National Unity. N. Y. Times, June 23, 1945, p. 1. Text of announcement: p. 4.
- 25-July 14 India. Conference of Indian leaders opened June 25 at Simla to consider British proposals for broadening India's self-government. N. Y. Times, June 26, 1045, p. 4. Adjourned June 29 [to July 14]. N. Y. Times, June 30, 1945, p. 2.

- Discussions were continued, but parties failed to reach agreement. The Conference closed July 14. N. Y. Times, July 15, 1945, p. 6. Text of statement by Lord Wavell at final meeting: London Times, July 16, 1945, p. 3.
- 26 POLAND (in exile). Sent note to all United Nations Governments except U.S.S.R., declaring the Provisional Government at Warsaw illegal. Text: Free Europe. (London), June 29, 1945, p. 194.
- 27 STETTINIUS, EDWARD R. Resignation as Secretary of State was accepted by President Truman who announced he would appoint Mr. Stettinius as United States representative to the United Nations when established. N. Y. Times, June 28, 1945, pp. 1, 13.
- POLAND (Provisional Government). Polish Provisional Government unanimously resigned and was replaced by the new Government of National Unity. N. Y. Times, June 29, 1945, p. 1. Cabinet members: p. 4; London Times, June 29, 1945, p. 4.
- CKECHOSLOVAK REPUBLIC—SOVIET RUSSIA. Signed agreement at Moscow by which the Carpatho-Ukraine (Ruthenia) was ceded to Russia. N. Y. Times, June 30, 1945, p. 1. Text of pact and protocol: p. 4; Current History (N. Y.), August, 1945, pp. 151-153; United Nations Review (N. Y.), July 15, 1945, pp. 157-158. Summary: London Times, June 30, 1945, p. 4.
- 29 France (Provisional Government)—Soviet Russia. Signed agreement in Moscow on repatriation of French prisoners and deportees still in Russian territory. N. Y. Times, July 2, 1945, p. 5.
- 29/July 31 Japan—United States. The United States admitted responsibility on June 29 for sinking relief ship Awa Maru which was travelling under safe conduct. N. Y. Times, July 14, 1945, pp. 1, 3; D. S. B., July 15, 1945, pp. 85–87. In a note of July 31 the United States offered to replace the Awa Maru, accidentally sunk by an American submarine. N. Y. Times, Aug. 9, 1945, p. 9. Text: D. S. B., Aug. 12, 1945, pp. 249–250.
- 30-July 13 China—Soviet Russia. Conversations between Premier T. V. Soong and Russian officials opened in Moscow on June 30. N. Y. Times, July 1, 1945, p. 3. Issued communiqué July 13, stating that the two countries had reached "a broad mutual understanding on important questions." N. Y. Times, July 15, 1945, pp. 1, 5; London Times, July 16, 1945, p. 4.

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- 8 BTRNES, JAMES F. Sworn in as Secretary of State. N. Y. Times, July 4, 1945, p. 1.
- 5-9 Polish Recognition (Provisional Government of National Unity). Recognition was granted as follows: United States, China and Great Britain, July 5. London Times, July 6, 1945, p. 4; N. Y. Times, July 6, 1945, pp. 1, 6. Texts of American and British statements: p. 6. France, July 5. C.I.E.D., June 19-July 9, 1945, p. 6. Canada announced recognition July 8. London Times, July 9, 1945, p. 4. Denmark, July 9. C.I.E.D., July 10-22, 1945, p. 44.
- 7 CHINA—Great Britain. Signed agreement at Chungking concerning extraterritoriality for troops of one country on territory of the other. London Times, July 10, 1945, p. 3.
- 7 POLAND (National Unity)—Soviet Russia. Signed trade treaty, granting reciprocal "most-favored nation" status. N. Y. Times, July 10, 1945, p. 5.
- 7 SPAIN—SWITZERLAND. Announced signature of trade treaty. N. Y. Times, July 8, 1945, p. 7.
- 9-14 British Commonwealth Air Transfort Council. Meetings opened in London on July 9. London Times, July 10, 1945, p. 2. Agreed on pooling Commonwealth

- air routes, with the exception of Canada-England routes. The governments concerned must approve the agreement. Conference closed July 14. London *Times*, July 16, 1945, p. 2; July 18, pp. 2; 4; C. S. Monitor, July 18, 1945, p. 5.
- 17 France (Vichy)—Great Britain. British Foreign Office issued 4000-word statement denying charges that Prime Minister Churchill and Marshal Petain made secret agreement in 1940. London Times, July 17, 1945, p. 5; N. Y. Times, July 21, 1945, p. 3. Text: Cmd. 6662.
- 17/26 Belgian. Parliament voted to keep the Regent in power, barring Leopold III from returning to the throne. London Times, July 19, 1945, p. 4; N. Y. Times, July 18, 1945, p. 1. Text of the King's letter to Prince Regent Charles: p. 6. On July 26 the Belgian Chamber of Deputies gave vote of confidence to the Government. N. Y. Times, July 27, 1945, p. 8.
- 17-21 JAPAN—SWITZERLAND—UNITED STATES. By exchange of notes between the Swiss Legation in Washington and Acting Secretary of State Grew, Switzerland received permission to represent Japanese interests in the United States, with the exception of Hawaii. Comment and text of notes: D. S. B., July 22, 1945, pp. 125-126.
- 17-August 2 Berlin Conference. Prime Minister Churchill, President Truman and Generalissimo Stalin opened discussions at the Kaiser Wilhelm Palace in Potsdam on July 17. Mr. Truman was asked to preside at meetings. N. Y. Times, July 18, 1945, p. 1. Meeting was suspended July 25-27, while results of the British election were being declared. Meeting resumed July 28 with Prime Minister Attlee representing Great Britain. On August 1 Ambassadors of the "Big Three" presented notes to the French Government, outlining agreements reached and asking concurrence of France therein. N. Y. Times, Aug. 2, 1945, p. 4. The Conference adjourned August 2. N. Y. Times, Aug. 3, 1945, p. 1. Discussion of notes: p. 7. Issued communiqué on August 2, announcing plans for Europe. Text: D. S. B., Aug. 5, 1945, pp. 153-160; N. Y. Times, Aug. 3, 1945, p. 8; this Journal, Vol. 39 (1945), Supplement, pp. 245; London Times, Aug. 3, 1945, p. 8. List of delegates: N. Y. Times, Aug. 3, 1945, p. 8; D. S. B., Aug. 5, 1945, pp. 160-161. Text of President Truman's report on the meeting: N. Y. Times, Aug. 10, 1945, p. 4; D. S. B., Aug. 12, 1945, pp. 208-213.
- PRISONERS OF WAR. Department of State announced that Japan had agreed to comply with the international law permitting neutral observers to visit prisoner of war camps. N. Y. Times, July 23, 1945, p. 1.
- 23/August 15 Petain, Marshal Henri-Philippe. Trial for treason opened in Paris on July 23. Summary of indictment: London Times, July 24, 1945, p. 3. He was found guilty, but mercy was recommended because of his age. N. Y. Times, Aug. 15, 1945, p. 1.
- 26/27 Great Britain. Clement R. Attlee was appointed Prime Minister following Labor Party victory in elections. N. Y. Times, July 27, 1945, p. 1. On July 27, the new Cabinet was appointed. 6 principal members: N. Y. Times, July 28, 1945, p. 1. Complete list: London Times, Aug. 6, 1945, p. 2.
- 26-August 14 World War. Great Britain, United States, and China issued from Berlin a proclamation to Japan, stating their peace terms for immediate surrender and alternative treatment for Japan ("Potsdam declaration"). N. Y. Times, July 27, 1945, pp. 1, 4. Text: p. 4; D. S. B., July 29, 1945, pp. 137-138; London Times, July 27, 1945, p. 4. On August 9 President Truman warned Japan to surrender or risk destruction. Text of radio address: N. Y. Times, Aug. 10, 1945, p. 12. On August 10 Japan submitted to the "Big Four" via Sweden and Switzerland an offer to surrender on condition that the Mikado remain in office. Text: London Times, Aug. 11, 1945, p. 4; N. Y. Times, Aug. 11, 1945, p. 3. Texts of Swiss

note containing surrender offer and reply sent on behalf of the Governments of the United States, United Kingdom, U.S.S.R. and China: D. S. B., Aug. 12, 1945, pp. 205–206; N. Y. Times, Aug. 12, 1945, p. 3. Text of Allied reply: London Times, Aug. 13, 1945, p. 4. On August 14 Japan accepted unconditional surrender in a rescript. Text: D. S. B., Aug. 19, 1945, p. 255; N. Y. Times, Aug. 15, 1945, pp. 1, 4. Texts of Prime Minister Attlee's broadcast and Secretary Byrnes' instructions to the Japanese: p. 4. Texts of King George's radio address and Mr. Churchill's address in the House of Commons: N. Y. Times, Aug. 16, 1945, p. 4. Text of Secretary Byrnes' instructions of August 14: D. S. B., Aug. 19, 1945, p. 256.

31 IRAQ—UNITED STATES. Signed mutual-aid agreement in Washington. D. S. B., Aug. 5, 1945, p. 202.

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- 1 ALLIED MINISTERS OF EDUCATION. Released text of a draft constitution for an educational and cultural organization of the United Nations. Text: N. Y. Times, Aug. 1, 1945, p. 13; D. S. B., Aug. 5, 1945, pp. 168-172; Cong. Rec. (daily), Aug. 1, 1945, pp. 8356-8358.
- 1 FINLAND—POLAND (National Unity). Announcement was made of decision to renew diplomatic relations. London *Times*, Aug. 2, 1945, p. 3.
- 1 Prisoners of War. Department of State issued statement concerning Japanese practice of locating prisoners of war and civilian internment camps in areas subject to aerial bombardment. D. S. B., Aug. 5, 1945, pp. 176-177.
- ZIONIST CONGRESS. First world conference since 1939 opened in London. N. Y. Times, Aug. 2, 1945, p. 11. Private sessions began on August 2. N. Y. Times, Aug. 3, 1945, p. 5.
- EUROPHAN ADVISORY COMMISSION. Section II of Communiqué, issued at close of the Berlin Conference recommended that the Commission be dissolved. N. Y. Times, Aug. 3, 1945, p. 8.
- 2 U.N.R.R.A.—Albania. Signed agreement for relief supplies and equipment for Albania. N. Y. Times, Aug. 3, 1945, p. 4; D. S. B., Aug. 5, 1945, pp. 179-180.
- FRENCH PROVISIONAL CONSULTATIVE ASSEMBLY. Final session of the Assembly was held. N. Y. Times, Aug. 4, 1945, p. 4.
- 3 Soviet Russia—Turkey. Following denunciation of their treaty of amity and neutrality on March 20, 1945, Russia requested Turkey's agreement on three basic demands which would provide a satisfactory foundation for the negotiation of a new treaty. Turkey refused and the conversations ended. N. Y. Times, Aug. 4, 1945, p. 1.
- SWITZERLAND—UNITED STATES. State Department announced conclusion of an interim agreement relating to air transport services, effective this date, by an exchange of notes at Bern. D. S. B., Aug. 5, 1945, p. 198; N. Y. Times, Aug. 6, 1945, p. 9. Text: D. S. B., Aug. 19, 1945, pp. 269-270.
- 4 ARGENTINA—SWEDEN. Signed trade pact. Summary: N. Y. Times, Aug. 5, 1945, pp. 1, 26.
- 5 ICHLAND—UNITED STATES. Announced signature of a "five freedoms" airline agreement. N. Y. Times, Aug. 6, 1945, p. 9.
- 5 SPAIN. Issued communique rejecting "as arbitrary and unjust" the Berlin declaration excluding Franco Spain from membership in the United Nations. Text: N. Y. Times, Aug. 5, 1945, p. 23.
- 6 FINLAND—SOVIET RUSSIA. Russia notified United States Department of State of resumption of diplomatic relations with Finland. N. Y. Times, Aug. 7, 1945, p. 11.

- 6 RUMANIA—Soviet Russia. Russia notified United States Department of State of its resumption of diplomatic relations with Rumania. N. Y. Times, Aug. 7, 1945, p. 11.
- 6/11 Atomic Bomb. Texts of President Truman's and Secretary of War Stimson's statements regarding the release of an atomic bomb on Japan: N. Y. Times, Aug. 7, 1945, p. 4. Text of Mr. Winston Churchill's statement: p. 8. Use of the bomb was protested by Japan. N. Y. Times, Aug. 11, 1945, p. 1.
- 7 GERMANY. Highest court in Berlin, the Landsgericht, reopened, under the American military governor's auspices. N. Y. Times, Aug. 8, 1945, p. 10.
- U.N.R.R.A. Council. 8d session opened meetings in London, postponed from July
 D. S. B., Aug. 12, 1945, p. 215; N. Y. Times, Aug. 8, 1945, p. 16; London
 Times, Aug. 8, 1945, p. 2. List of American delegation: D. S. B., July 29, 1945,
 p. 142.
- 8 Austrian Occupation. Governments of the United States, Great Britain, Soviet Russia and France issued joint statement containing summary of agreements on control machinery [the Allied Commission for Austria] and zones of occupation, reached by the European Advisory Council. Text: N. Y. Times, Aug. 9, 1945, p. 11; D. S. B., Aug. 12, 1945, pp. 221-222; London Times, Aug. 9, 1945, p. 3; C. I. E. D., Aug. 6-22, 1945, pp. 100-101.
- WAR CRIMES. United States, Great Britain, France and Soviet Russia signed pact for the establishment of an international military tribunal to try German war criminals. N. Y. Times, Aug. 9, 1945, p. 1. Texts of agreement, constitution for an international military tribunal, report of War Crimes Committee and statement by Mr. Justice Jackson: p. 10; London Times, Aug. 9, 1945, p. 8; D. S. B., Aug. 12, 1945, pp. 222-228. Text of agreement: this Journal, Vol. 39 (1945), Supplement, pp. 257.
- YUGOSLAVIA. King Peter issued proclamation in London, declaring the Regents had failed to fulfill their oaths and obligations, and withdrawing the authority vested in them by him. N. Y. Times, Aug. 9, 1945, p. 15. Text: London Times, Aug. 9, 1945, p. 3.
- TANGIER. American, British, Soviet and French representatives opened meetings in Paris to discuss establishment of a provisional political status for Tangier, to replace General Franco's authority. N. Y. Times, Aug. 11, 1945, p. 8. Text of United States statement on future status of Tangier: N. Y. Times, July 3, 1945, p. 3.
- WAR CRIMES. Appointment was announced of Mr. H. W. Shawcross, K.C., Attorney General, as chief prosecutor on behalf of the United Kingdom. London Times, Aug. 14, 1945, p. 4.
- 14 China—Soviet Russia. Signed 30-year treaty of friendship in Moscow and agreements regarding the Changchun Railway, Port Arthur, Port Darien, Eastern Provinces, Government and Outer Mongolia. Texts: N. Y. Times, Aug. 27, 1945, p. 4.
- 15 German Occupation. United States, Great Britain, Soviet Russia and France officially announced the boundaries of their respective zones in Germany. Map: N. Y. Times, Aug. 16, 1945, p. 13.

MULTIPARTITE CONVENTIONS

AIR SERVICES TRANSIT AGREEMENT. Chicago, Dec. 7, 1944. Acceptances:

Afghanistan. May 16, 1945. D. S. B., May 27, 1945, p. 968. Belgium. July 17, 1945. D. S. B., Aug. 5, 1945, p. 198.

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El Salvador. May 31, 1945. D. S. B., June 10, 1945, p. 1057.
    Great Britain. May 31, 1945. D. S. B., June 10, 1945, p. 1057.
    India. D. S. B., May 20, 1945, p. 941.
    Iraq. June 14, 1945. D. S. B., Aug. 5, 1945, p. 198.
    Paraguay. July 27, 1945. D. S. B., Aug. 5, 1945, p. 198.
    Switzerland. July 6, 1945. D. S. B., Aug. 5, 1945, p. 199.
    Turkey. June 5, 1945. D. S. B., June 10, 1945, p. 1058.
 Signatures:
    Australia. July 4, 1945. D. S. B., Aug. 5, 1945, p. 198.
    El Salvador. May 9, 1945. D. S. B., May 20, 1945, p. 942.
    Luxembourg. July 9, 1945. D. S. B., Aug. 5, 1945, p. 198.
    Paraguay. July 27, 1945. D. S. B., Aug. 5, 1945, p. 198.
    South Africa. June 4, 1945. D. S. B., June 10, 1945, p. 1057. Switzerland. July 6, 1945. D. S. B., Aug. 5, 1945, p. 195.
    Syria. July 6, 1945. D. S. B., Aug. 5, 1945, p. 199.
 Status of agreement: D. S. B., June 24, 1945, p. 1169.
AIR TRANSPORT AGREEMENT. Chicago, Dec. 7, 1944.
  Acceptances:
    Afghanistan. May 16, 1945. D. S. B., May 27, 1945, p. 968.
    China. June 6, 1945. D. S. B., June 10, 1945, p. 1058.
    El Salvador. May 31, 1945. D. S. B., June 10, 1945, p. 1057.
    Paraguay. July 27, 1945. D. S. B., Aug. 5, 1945, p. 198.
  Ratification:
    Turkey. June 5, 1945. D. S. B., June 10, 1945, p. 1058.
  Signatures:
    El Salvador. May 9, 1945. D. S. B., May 20, 1945, p. 942.
    Paraguay. July 27, 1945. D. S. B., Aug. 5, 1945, p. 198.
    Syria (with reservation). July 6, 1945. D. S. B., Aug. 5, 1945, p. 199.
  Status of agreement: D. S. B., June 24, 1945, p. 1169.
ALIENS STATUS. Havana, Feb. 20, 1928.
  Ratification:
    Peru. April 25, 1945.
  Ratification deposited:
    Peru. June 21, 1945. D. S. B., July 15, 1945, p. 100.
ASYLUM CONVENTION. Havana, Feb. 20, 1928.
  Ratification:
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DOROTHY R. DART

JUDICIAL DECISIONS

SHOSHONE INDIANS v. UNITED STATES

SUPREME COURT OF THE UNITED STATES

[March 12, 1945.]

Indian treaties are to be construed according to their tenor and intent and are not to be otherwise construed to remedy alleged injustices.

otherwise construed to remedy alleged injustices.

Construction of treaty of July 30, 1863, between the United States and the Northwestern Bands of the Shoshone Indians and other relevant instruments.

The Northwestern Bands of Shoshone Indians, petitioners here, seek to recover from the United States damages estimated at fifteen million dollars for the taking of some fifteen million acres of the lands held by these Indians by aboriginal or immemorial title. This title was alleged by the Indians to have been recognized by the United States by the treaty between the petitioners and the United States at Box Elder, Utah Territory, July 30, 1863.

The suit was begun in the Court of Claims against the United States by the bands pursuant to a special jurisdictional act of Congress of February 28, 1929, 45 Stat. 1407. The Act consented to suit and recovery against the United States upon the following conditions:

"That jurisdiction be, and hereby is, conferred upon the Court of Claims, notwithstanding lapse of time or statutes of limitations, to hear, adjudicate, and render judgment in any and all claims which the north-western bands of Shoshone Indians may have against the United States arising under or growing out of the treaty of July 2, 1863 (Eighteenth Statutes, page 863—2 Kappler, 848); treaty of July 30, 1863 (Thirteenth Statutes, page 863—2 Kappler, 850); Act of Congress approved December 15, 1874 (Eighteenth Statutes, page 291), and any subsequent treaty Act of Congress, or Executive order, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States."

This Court has jurisdiction to grant certiorari under the jurisdictional act and § 3 (b), Act of February 13, 1925, 43 Stat. 939, as amended by Act of May 22, 1939, 53 Stat. 752; see *Colgate v. United States*, 280 U. S. 43. Certiorari was granted in view of the importance of the question in Indian affairs.

The suit is based upon the unlawful taking after the alleged recognition of the Indian title by the Box Elder treaty. We do not read the petition as claiming any right to compensation for the extinguishment of an Indian aboriginal title, which was unrecognized or unacknowledged by the Box

¹The other sections of the jurisdictional act are routine and not here involved. They provide for the employment of attorneys for the Indians, for set-offs to the United States, for review in this Court, process, service on and appearance by the Attorney General and the disposition of sums recovered.

Elder treaty. Under the words of the jurisdictional act, "arising under or growing out of the treaty," suit is authorized only for rights acknowledged by the treaty. The act does not authorize a suit for loss of Indian tribal rights arising from any other acts of the United States. If the treaty recognized the aboriginal or Indian title, the authority to sue for the taking under the jurisdictional act is not questioned. No claim is brought forward by petitioners arising under or growing out of the other treaties, acts or orders which are referred to in the jurisdictional act. See Northwestern Bands of Shoshone Indians v. United States, 95 Ct. Cl. 642, 680.

The Court of Claims determined that the claim for the taking of land sued upon by petitioners did not grow out of the Box Elder treaty. Certiorari was sought and granted to determine whether there was "recognition" or "acknowledgement" of the Indian title by this treaty through the language employed or by the act of entering into a treaty with the Indians as to the use by the United States of lands which were claimed by the petitioners.

Even where a reservation is created for the maintenance of Indians, their right amounts to nothing more than a treaty right of occupancy. Shoshone Tribe v. United States, 299 U. S. 476, 496. Prior to the creation of any such area, formally acknowledged by the United States as subject to such right of Indian occupancy, a certain nation, tribe or band of Indians may have claimed the right because of immemorial occupancy to roam certain territory to the exclusion of any other Indians and in contradistinction to the custom of the early nomads to wander at will in the search for food. United States v. Santa Fe Pacific R. Co., 314 U. S. 339, 345. This claim has come to be known as Indian title and is likewise often spoken of as the right of occupancy. To distinguish from a recognized right of occupancy, we shall refer to the aboriginal usage without definite recognition of the right by the United States as Indian title.

Since Johnson v. M'Intosh, 8 Wheat, 543, decided in 1823, gave rationalization to the appropriation of Indian lands by the white man's government, the extinguishment of Indian title by that sovereignty has proceeded, as a political matter, without any admitted legal responsibility in the sovereign to compensate the Indian for his loss. Exclusive title to the lands passed to the white discoverers, subject to the Indian title with power in the white sovereign alone to extinguish that right by "purchase or conquest." 8

² The claim upon which the Indian Affairs Committee of the House based its recommendation for the passage of an identical jurisdictional act was a claim for the taking of this aboriginal title which the Committee said was recognized by the Box Elder treaty. H. Rep. No. 1030, 70th Cong., 1st Sess.; cf. United States v. Creek Nation, 295 U. S. 103, 108.

*In a similar jurisdictional act for the benefit of the Eastern Shoshone the question of whether their claim arose under or grew out of a certain treaty was not involved. That treaty, Fort Bridger, July 3, 1868, specifically recognized and set apart a reservation for the Eastern Shoshone. Art. II, 15 Stat. 673; 44 Stat. 1349; Shoshone Tribe v. United States, 299 U. S. 476.

Wheat. at 574, 585–88. The whites enforced their claims by the sword and occupied the lands as the Indians abandoned them. Congress has authorized suits on the original Indian title but no recovery has as yet been obtained on that ground. See Coos Bay Indian Tribe v. United States, 87 Ct. Cl. 143; cf. The Wichita Indians v. United States, 89 Ct. Cl. 378, 413, 414. In this case, however, the success of the claim depends not upon proof of the Indian title, which may be admitted, 95 Ct. Cl. at 690, but upon recognition of that title by the Box Elder treaty. It is quite understandable from the point of view of both petitioners and Congress that the Government should limit its submission to suits to claims under the boundaries if acknowledged by the treaty rather than to consent to judicial examination of claims for taking the unknown area of their possible Indian title. The Shoshone Indian title was in Indian country (Act to regulate trade and intercourse with the Indian tribes, 4 Stat. 729; Bates v. Clark, 95 U. S. 204, 206-208) and as a consequence subject to all the uncertainties of definition of boundaries and difficulties of proof to establish aboriginal title for tribes with a shifting habitat.

The decisive question in this case is whether it was intended by the North-western Shoshone or Box Elder treaty of July 30, 1863, to recognize or acknowledge by implication the Indian title to the lands mentioned in that treaty. *United States* v. *Santa Fe Pacific R. Co.*, 314 U. S. 339, 347. From such recognition or acknowledgement by this treaty would flow a right of occupancy which would be compensable under the jurisdictional act.

Full findings of fact appear with the opinion below in *The Northwestern Bands of Shoshone Indians* v. *United States*, 95 Ct. Cl. 642. These findings show that petitioners here, the Northwestern bands, were at the time of the treaty a part of the Shoshone tribe, a nomadic Indian nation of less than ten thousand people which roamed over eighty million acres of prairie, forest and mountain in the present states of Wyoming, Colorado, Utah, Idaho and Nevada. The group with which we are concerned was comprised of some fifteen or eighteen hundred persons and claimed, by the treaty, Indian title to some ten million acres and now claim compensation for over six million additional acres.

After the discovery of gold in California, white travelers and settlers began to traverse and people the Shoshone domain with the result that the Indians' game disappeared from their hunting grounds. Racial relations

⁴ Beecher v. Wetherby, 95 U. S. 517, 525; Buttz v. Northern Pacific Railroad, 119 U. S. 55, 70; Lone Wolf v. Hitchcock, 187 U. S. 553, 564; United States v. Santa Fe Pacific R. Co., 314 U. S. 339, 347.

^{*}Letter of Commissioner Doty, transmitted by Message of the President, January, 1864, Executive K, L, M, N, O, 38th Cong., 1st Sess., p. 17:

[&]quot;As none of the Indians of this country have permanent places of abode, in their hunting excursions they wander over an immense region, extending from the fisheries at and below Salmon falls, on the Shoshonee river, near the Oregon line, to the sources of that stream, and to the buffalo country beyond."

degenerated to the point that Indian depredations interfered with travel and settlement, the overland mails and the new telegraph lines. By the time of the outbreak of the Civil War the Commissioner of Indian Affairs, the agents and superintendents of the Shoshone territory were aware of the misery of the Shoshones, the dangers to the emigrant trains and need for peace to enable travel and settlement in the area. Word had reached the Commissioner from his superintendent in Utah that the Shoshone were inclined toward accepting support on limited reservations and were willing in return to cede their other lands to the United States.

On July 5, 1862, 12 Stat. 512, 529, Congress appropriated \$20,000 for defraying the expenses of negotiating a treaty with the Shoshones. appropriation followed a letter from the Secretary of the Interior to the chairman of the House Committee on Indian Affairs expressing the view that the lands owned by the Indians of Utah were largely unfit for cultivation and that it was "not probable that any considerable portion of them will be required for settlement for many years." A special commission was promptly appointed and instructed that it was not expected that the proposed treaty would extinguish Indian title to the lands but only secure freedom from molestation for the routes of travel and "also a definite acknowledgment as well of the boundaries of the entire country they claim as of the limits within which they will confine themselves, which limits it is hardly necessary to state should be as remote from said routes as practicable."

As the distances made it impracticable to gather the Shoshone Nation into one council for treaty purposes, the commissioners made five treaties in an endeavor to clear up the difficulties in the Shoshone country. are set out in full in the report below. 95 Ct. Cl. 642. Four will be found also in 13 Stat. 663, 681, and 18 Stat. 685, 689. The fifth or Mixed Band treaty was not proclaimed. It is at 5 Kappler 693. It is sufficient here to say that by the treaties the Indians agreed not to molest travelers, stage coaches, telegraph lines or projected railroads. All the Shoshone treaties

⁶ Articles II and III from the Fort Bridger treaty of July 2, 1863, the one first made, will illustrate the type of agreement:

"ARTICLE II. The several routes of travel through the Shoshonee country, now or hereafter used by white men, shall be and remain forever free and safe for the use of the hereafter used by white men, shall be and remain forever free and safe for the use of the Government of the United States, and of all emigrants and travellers under its authority and protection, without molestation or injury from any of the people of said nation. And if depredations should at any time be committed by bad men of their nation, the offenders shall be immediately seized and delivered up to the proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travellers passing peaceably over said routes is hereby guaranteed by said nation. Military agricultural settlements and military posts may be established by the President of the United States along said routes, ferries may be maintained over the rivers wherever they may be required and houses erected and settlements formed at such points as may they may be required, and houses erected and settlements formed at such points as may

be necessary for the comfort and convenience of travellers.

"ARTICLE III. The telegraph and overland stage lines having been established and operated through a part of the Shoshonee country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said nation, and that their property, and the lives of passengers in the stages, and of the employees of the respective companies shall be protected by them.

were similar in form. They show that the boundaries claimed, as petitioner points out, covered the entire Shoshone country. After all five were negotiated Commissioner Doty was able to trace a rough map of the Shoshone country to show the Commissioner of Indian Affairs "the exterior boundaries of the territories claimed by the Shoshonees in their recent treaties, as also the lines of the country occupied by different portions of the tribe indicated upon it as correctly as the map will allow." He had asked Indian Affairs for the map upon which this information was traced "to show the boundaries of the country ceded by the Shoshones."

Petitioners' treaty, the Northwestern Shoshone treaty, needs to be set out in full for ready examination. It reads as follows:

"Articles of agreement made at Box Elder, in Utah Territory, this 30th day of July, A. D., 1863, by and between the United States of America, represented by Brigadier-General P. Edward Connor, commanding the military district of Utah, and James Duane Doty, commissioner, and the northwestern bands of the Shoshonee Indians, represented by their chiefs and warriors:

ARTICLE I. It is agreed that friendly and amicable relations shall be reestablished between the bands of the Shoshonee Nation, parties hereto, and the United States, and it is declared that a firm and perpetual peace shall be henceforth maintained between the said bands and the United States.

ARTICLE II. The treaty concluded at Fort Bridger on the 2nd day of July, 1863, between the United States and the Shoshonee Nation, being read and fully interpreted and explained to the said chiefs and warriors, they do hereby give their full and free assent to all of the provisions of said treaty, and the same are hereby adopted as a part of this agreement, and the same shall be binding upon the parties hereto.

ARTICLE III. In consideration of the stipulations in the preceding articles, the United States agree to increase the annuity to the Shoshonee nation five thousand dollars, to be paid in the manner provided in said treaty. And the said northwestern bands hereby acknowledge to have received of the United States, at the signing of these articles, provisions and goods to the amount of two thousand dollars, to relieve their immediate necessities, the said bands having been reduced by the war to a state of utter destitution.

[&]quot;And further, it being understood that provision has been made by the Government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by said nation that said railway, or its branches, may be located, constructed, and operated, without molestation from them, through any portion of the country claimed by them."

Article IV relating to boundaries in this Fort Bridger treaty reads as follows:

[&]quot;It is understood the boundaries of the Shoshonee country, as defined and described by said nation, is as follows: On the north, by the mountains on the north side of the valley of Shoshonee or Snake River; on the east, by the Wind River mountains, Peenahpah river, the north fork of Platte or Koo-chin-agah, and the north Park or Buffalo House, and on the south, by Yampah river and the Uintah mountains. The western boundary is left undefined, there being no Shoshonees from that district of country present; but the bands now present claim that their own country is bounded on the west by Salt Lake." 18 Stat. 685-6.

ARTICLE IV. The country claimed by Pokatello, for himself and his people, is bounded on the west by Raft River and on the east by the Porteneuf Mountains." 13 Stat. 663.

Before it or the other treaties were ratified by the Senate an additional article was added to each and, except for one treaty not further involved here, accepted by the Indians. The addition reads as follows:

"Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof."

The portions of the Fort Bridger treaty of July 2, 1863, of any possible effect will be found in note 6, supra.

Subsequent to the ratification of the treaties, an act of Congress was passed on February 23, 1865, 13 Stat. 432, for the extinction of Indian title to lands in Utah territory; and another act on July 20, 1867, 15 Stat. 17, for dealing with hostile Indians and choosing reservations for Indians dwelling east of the Rocky Mountains. None of the Shoshones entered into treaties under either of these acts except the Eastern Shoshones who had signed the Fort Bridger treaty of July 2, 1863. On July 3, 1868, they relinquished all claim to United States territory except a reservation in Wyoming of 3,047,730 acres. 15 Stat. 673. No other treaty or other formal arrangement has been made between petitioners and the United States dealing with their lands.

The Court of Claims summarized the history of the petitioner bands, subsequent to the Box Elder treaty, in this way:

"After the making of the treaty of July 30, 1863, the plaintiff bands became widely scattered over northern Utah and Nevada, and southern Idaho. In 1873 the Commissioner of Indian Affairs appointed a commission to investigate all tribes and bands in this region and to ascertain their number and the probability of gathering them upon one or more reservations where they could be more immediately under the care of the Government. The commission made an exhaustive investigation into the matters entrusted to it and reported that it had no trustworthy information as to the number of bands of the Northwestern Shoshone Indians. The commission further reported that a part of the Northwestern Shoshones under Pocatello (who signed the treaty of July 30, 1863) had already gone to the Fort Hall (Idaho) Reservation in southeast Idaho, and that Chief Tav-i-wun-shea, with his small band, had gone to the Wind River (Wyoming) Reservation created and set apart under the treaty with the Eastern Shoshones in 1863. Toomontso (who had signed the Northwestern Treaty of July 30) and his band at about this time took up their abode on the Fort Hall Indian Reservation. Eventually the remnants of the bands of Indians under San Pitz (a signer of the Northwestern Shoshone treaty of July 30), and Saigwits, also a party to the treaty, were induced by the commission to remove to the Fort Hall Indian Reservation, thus making a total of 400 Northwestern Shoshone Indians on the Fort Hall Reservation. The commission further reported that a careful enumeration disclosed that there were 400 Northwestern Shoshone Indians in southern Idaho. In 1873 a number of Northwestern Shoshone Indians had gathered in northeastern Nevada and were assigned by the Indian Agent in Nevada to a small area in that section as a home. On May 10, 1877, this tract, by order of the President, was withdrawn from sale or settlement and set apart as a reservation for the Northwestern Shoshone Indians. However, in 1879, all

Without seeking any cession or relinquishment of claim from the Shoshone, except the Eastern Shoshone relinquishment of July 3, 1868, just referred to, the United States has treated the rest of the Shoshone territory as a part of the public domain. School lands were granted. 13 Stat. 32; 26 Stat. 216; 28 Stat. 109. National forests were freely created. 33 Stat. 2307; 34 Stat. 3099, 3198, 3206, 3247, 3251; 37 Stat. 1678. The lands were opened to public settlement under the homestead laws. Report of the Commissioner of the General Land Office (1868), pp. 55, 59, 63; Report of the Commissioner of the General Land Office (1869), pp. 163, 168, 177. Thus we have administration of this territory by the United States proceeding as though no Indian land titles were involved.

The Court of Claims examined the evidence adduced before it and reached the conclusion as a finding of fact that the United States "did not intendthat it [the treaty] should be a stipulation of recognition and acknowledgement of any exclusive use and occupancy right or title of the Indians, parties thereto. . . . The treaty was intended to be, and was, a treaty of peace and amity with stipulated annuities for the purposes of accomplishing those objects and achieving that end." 95 Ct. Cl. at 676. This finding molded the opinion and judgment below. Whether the issue as to acknowledgment by a treaty of Indian title to land is treated as a question of fact, like Indian right to occupancy itself, United States v. Santa Fe Pacific R. Co., 314 U.S. 339, 345; 53 Stat. 752, or as a matter of inference to be drawn by the trier of fact from the treaty and surrounding circumstances or as a conclusion of law to be reviewed by this Court upon the record, this finding places the burden on petitioners to overthrow the judgment of the Court of Claims. ing its conclusion, the lower court pointed out in its opinion that nothing in the legislation or official documents, communications or instructions which brought about the treaty indicated any purpose to recognize Indian title to the territory over which the Shoshone roamed and hunted. sioners were instructed specifically on July 22, 1862, that they were not expected to negotiate for the extinction of the Indian title but for the security of routes over the lands and "a definite acknowledgment as well of the boundaries of the entire country they [the Indians] claim." The letter shows uncertainty as to the location of the bands. The Commissioner of Indian Affairs wrote of the Shoshone nation as roaming Utah and Eastern Washington but the very indefiniteness of the information required a statement from the Indians of their claims. 95 Ct. Cl. at 690. The Commissioner learned from the treaties that the Shoshones claimed territory in Colorado, Wyoming, Idaho, and Nevada aggregating several times the acreage in Utah. There apparently was no claim to Washington land. Commissioner Doty's letter transmitting the map describing the territories

the Indians thereon, numbering about 300, were removed to the Western Shoshone Indian Reservation known as the Duck Valley Indian Reservation in southwestern Idaho and northern Nevada." 95 Ct. Cl. at 677.

claimed by the Shoshones and telling of the negotiations has nothing that indicates the possibility of an acknowledgment by the United States of the Indian title to any of the lands. See note 5, supra.

An examination of the text of the Northwestern Shoshone treaty and the others which were entered into with the other Shoshone tribes, 95 Ct. Cl. 642, shows the commissioners carefully followed their instructions. In the Eastern Shoshone treaty, the boundaries are spoken of "as defined and described by said nation," note 6, supra. In the Northwestern Shoshone treaty the land is described as "The country claimed by Pokatello, for himself and his people." In the Western Shoshone treaty permission was given for mineral prospecting and extracting and the boundaries are said to define "the country claimed and occupied." The same language is used as to the boundaries in the Shoshone-Goship treaty. This treaty also permitted prospecting for and the working of mines. The Mixed Bands treaty described a country "claimed by the said bands" and "as described by them." Nowhere in any of the series of treaties is there a specific acknowledgment of Indian title or right of occupancy. It seems to us a reasonable inference that had either the Indians or the United States understood that the treaties recognized the Indian title to these domains, such purpose would have been clearly and definitely expressed by instruction, by treaty text or by the reports of the treaty commissioners, to their superiors or in the transmission of the treaties to the Senate for ratification.

Petitioners argue that the permission from the Indians for travel or mining and for the maintenance of communication and transportation facilities by the United States for its citizens imply a recognition by the United States of the Indian title. They quote, as persuasive, these words from an early Indian case: "The acceptance of these cessions is an acknowledgment of the right of the Cherokees to make or withold them." Worcester v. Georgia, 6 Pet. 515, 556. An examination of the circumstances under which this Court made the just-quoted statement illustrates how inapposite its use by petitioners is to the present question. The quotation was written in explanation of rights of passage which were granted by the Cherokees through lands which by other articles of the treaty had been specifically set apart and solemnly guaranteed to the Cherokees. 7 Stat. 39. No such specific recognition is in the Box Elder treaty. But we see nothing inconsistent with non-recognition of the Indian title and the insertion of these provisions against molestation of structures, travelers or exploiters of mineral deposits within the territories. The United States undoubtedly might have asserted, at the time of the treaty, its purpose to extinguish Indian title or it might have recognized Indian title or it might, as the Court of Claims held, sought only freedom from hostile acts from roving bands by the commitments for supplies. The treaties were made in the midst of civil war and before the outcome of that conflict was clear.

Petitioners urge that recognition of the Indian title was inferred from the

language of the Fort Laramie treaty of September 17, 1851, 11 Stat. 749, Fort Berthold Indians v. United States, 71 Ct. Cl. 308; Assiniboine Indian Tribe v. United States, 77 Ct. Cl. 347, 370; The Crow Nation v. United States, 81 Ct. Cl. 238, 272, and that a different inference in the present case is inconsistent with those holdings. Apart from the fact that different treaties are involved, the circumstances surrounding the execution of the Fort Laramie treaty indicate a purpose to recognize the Indian title to the lands described in the Fort Laramie treaty which may well have induced the Court of Claims to reach one conclusion in those cases and another in this. For example, the instructions to the commissioners for the Fort Laramie negotiations contained this direction:

"It is important, if practicable, to establish for each tribe some fixed boundaries within which they should stipulate generally to reside, and each should agree not to intrude within the limits assigned to another tribe without its consent." 71 Ct. Cl. 312.

Further in reporting the treaty, it was said:

"The laying off of the country into geographical, or rather national domains, I regard as a very important measure, inasmuch as it will take away a great cause of quarrel among themselves, and at the same time enable the Government to ascertain who are the depredators, should depredations hereafter be committed." 71 Ct. Cl. 313.

Furthermore, the words of the Fort Laramie treaty are more apt to express recognition of Indian title than those of Box Elder. Article 5 says:

"The aforesaid Indian nations do hereby recognize and acknowledge the following tracts of country, included within the metes and boundaries, hereinafter designated, as their respective territories, viz: . . ." 71 Ct. Cl. 315.

In consideration of the treaty stipulations the United States bound itself to furnish supplies and to protect the Indian nations against depredations by its citizens. Such distinctions may quite justifiably have led the Court of Claims to different conclusions than it reached from consideration of the Northwestern Shoshone treaty.⁸

⁸ We note but consider unimportant, because this issue was not involved, casual references by this and other courts that the Shoshone treaties recognized Indian title in the Shoshones. Shoshone Tribe v. United States, 299 U. S. 476, 485; United States v. Shoshone Tribe, 304 U. S. 111, 113; Shoshone Indians v. United States, 85 Ct. Cl. 331, 335; United States v. Board of Com'rs of Frement County, Wyo., 145 F. 2d 329.

We do not consider the references of the administrators in routine communications called for in the preparation of this case before the Court of Claims to the "Shoshoni Indian Reservation (Northwestern Band)" to the fact that the territory of the Shoshones "was recognized by the United States" or "set apart for the Shoshone Indians" of any more weight. Nothing in these statements shows that the attention of the administrators was focused on the problem of recognition or that they reflected a contemporaneous interpretation.

It does not seem important to determine whether the Court of Claims abused its discretion in refusing admission to such administrative letters written in 1939, relating to prepara-

Petitioners point out that the word "claim" or the phrase "country claimed" was often used on the frontier to indicate title or right. We know this meaning in mining law and in entries for land patents. The meaning of the word or phrase depends upon its use. In these treaties it seems clearly to designate the boundaries over which the Indians asserted Indian title but that falls short of acknowledgment of such right by the United States.

Reliance is also placed by petitioners upon the Senate's amendment to the treaty as a limitation of the treaty's recognition of Indian title to the described lands. This limitation, petitioners argue, demonstrates that no other limitation was intended. Petitioners take the position that there was no need for this limitation "if the treaty recognized no rights." While such a limitation would not have been needed if the Senate of that day were positive, on weighing the issue as we now do, that the treaty was ineffective to give any additional color to Indian titles within or without the Mexican Cession, it is unlikely that the ratifying body could or did appraise the several possibilities which are now presented. The Senate was well acquainted with the complications of Mexican land titles in the Cession. A portion of the lands lay within the boundaries of the former Mexican state of Alta Cali-The Senate was familiar, too, with the legal position of Indian titles in the Shoshone country outside the Mexican Cession.¹⁰ Such titles were subject to the same rules as similar titles in all Indian country. 4 Stat. 729. The status of Indian titles within the Mexican Cession of 1848, however, had not then been judicially determined.11 The treaty of Guadalupe Hidalgo guaranteed the property rights of Mexicans in the Cession. Controversies over these rights had caused the rejection by the Senate of Article X of the treaty as submitted.13 The rejection was followed by the protocol of Quere-

tion for this suit, of maps of the territory. We have examined the tendered evidence. It was also seen by the Court of Claims and if it had been admitted it would have been merely cumulative and could not have changed the conclusion below.

[&]quot;Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof."

¹⁰ Spanish claims north of the 42nd parallel of latitude, then the northern line of Mexico, were ceded to the United States in 1821, Treaties and Other International Acts of the United States, Vol. 3, p. 3, and Art. 8; Russian claims south of 54° 40′ north latitude in 1824, op. cit., p. 151 and Art. 3; and the British claims south of north latitude 49° in 1846, op. cit., Vol. 5, p. 3 and Art. III.

¹¹ Barker v. Harvey, 181 U. S. 481, Cramer v. United States, 261 U. S. 219; United States v. Santa Fe Pacific R. Co., 314 U. S. 339.

¹³ 5 Treaties op. cit., supra, 207, Art. VIII and IX. United States v. O'Donnell, 303 U. S. 501, 504.

¹³ Treaties and Other International Acts of the United States, Vol. 5, pp. 242, 245: "Armcle X. All grants of land made by the Mexican Government or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future, within the limits of the United States, shall be respected as valid, to the same

taro of 1848 in which our commissioners for the exchange of ratifications undertook to make explanation to Mexico of the rejection of Article X.¹⁴ The protocol itself was a subject of House and Senate debate and of extensive diplomatic correspondence.¹⁵ There had been, also, the Act of March 3, 1851, 9 Stat. 631, to settle the private land claims in California, after its admission as a state. Litigation over land titles in the Mexican Cession had already reached this Court. United States v. Nye, 21 How. 408; United States v. Bassett, 21 How. 412; United States v. Rose, 23 How. 262. We do not think that the amendment indicates more than an intention to be sure the new treaty did not add to the complexities of the Mexican Cession title situation. Cf. Barker v. Harvey, 181 U. S. 481, 491; United States v. Title Ins. Co., 265 U. S. 472, 484.

Petitioners suggest that in the construction of Indian treaties we, as a self-respecting nation, hesitate to construe language, which is selected by us as guardian of the Indians, to our ward's prejudice. "All doubts," say petitioners, "must be resolved in their [the Indians'] favor." Mr. Justice McLean, concurring in Worcester v. Georgia, 6 Pet. 515 at 582, said, "The language used in treaties with the Indians should never be construed to their prejudice." But the context shows that the Justice meant no more than that the language should be construed in accordance with the tenor of the treaty. That, we think, is the rule which this Court has applied consistently to Indian treaties. We attempt to determine what the parties meant by the treaty. We stop short of varying its terms to meet alleged injustices. Such generosity, if any may be called for in the relations between the United States and the Indians, is for the Congress. 17

It seems to us clear from the circumstances leading up to and following the execution of the Box Elder treaty that the parties did not intend to

"Second. The American Government by suppressing the Xth article of the Treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the Treaty, preserve the legal value which they may possess; and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.

"Conformably to the law of the United States, legitimate titles to every description of property personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May 1846, and in Texas up to the 2d March 1836." Treaties, id., vol. 5, p. 381.

extent that the same grants would be valid, if the said territories had remained within the limits of Mexico. . . ."

¹⁴ The explanation in the second article of the protocol was as follows:

See Treaties, id., vol. 5, pp. 380-406, particularly p. 387.

¹⁶ This is the meaning of the other cases which are cited by petitioners upon this point. Jones v. Meehan, 175 U. S. 1, 10–12; United States v. Winans, 198 U. S. 371, 380; Marlin v. Lewallen, 276 U. S. 58, 64; United States v. Payne, 264 U. S. 446, 448–49; Nor. Pac. Ry. Co. v. United States, 227 U. S. 355, 366; Seufert Bros. Co. v. United States, 249 U. S. 194, 198; United States v. Shoshone Tribe, 304 U. S. III, 116; see also Tulee v. Washington, 315 U. S. 681, 684.

¹⁷ United States v. Choctaw &c. Nations, 179 U. S. 494, 534–36; Choctaw Nation v. United States, 318 U. S. 423, 432.

recognize or acknowledge by that treaty the Indian title to the lands in question. Whether the lands were in fact held by the Shoshones by Indian title from occupancy or otherwise or what rights flow to the Indians from such title is not involved. Since the rights, if any the Shoshones have, did not arise under or grow out of the Box Elder treaty, no recovery may be had under the jurisdictional act.

Affirmed.

Mr. Justice Roberts is of the view that the judgment should be reversed.

Mr. Justice Jackson, concurring.

Mr. Justice Black and I think it may be desirable to state some of the difficulties which underlie efforts to leave such an Indian grievance as this to settlement by a lawsuit.

It is hard to see how any judicial decision under such a jurisdictional act can much advance solution of the problem of the Shoshones. Any judgment that we may render gives to these Indians neither their lands nor money. The jurisdictional act provides that the proceeds above attorneys' fees shall "be deposited in the Treasury of the United States to the credit of the Indians" at 4 per cent interest and "shall be subject to appropriation by Congress only for the health, education, and industrial advancement of said Indians." The only cash payment is attorneys' fees. Section 7 provides that the Court of Claims shall determine a reasonable fee, not to exceed 10 per cent of the recovery, together with expenses, to be paid to the attorneys for the Northwestern Bands out of the sums found due. After counsel are thus paid, not a cent is put into the reach of the Indians; all that is done for them by a judgment is to earmark some funds in the Treasury from which Congress may as it sees fit from time to time make appropriations "for the health, education, and industrial advancement of said Indians." Congress could do this, of course, without any judgment or earmarking of funds, as it often has done. Congress, even after judgment, still must decide the amount and times of payment to the Indians according to their needs.

We would not be second to any other in recognizing that—judgment or no judgment—a moral obligation of a high order rests upon this country to provide for decent shelter, clothing, education, and industrial advancement of the Indian. Nothing is gained by dwelling upon the unhappy conflicts that have prevailed between the Shoshones and the whites—conflicts which sometime leave one in doubt which side could make the better claim to be civilized. The generation of Indians who suffered the privations, indignities, and brutalities of the westward march of the whites have gone to the Happy Hunting Ground, and nothing that we can do can square the account with them. Whatever survives is a moral obligation resting on the descendants of the whites to do for the descendants of the Indians what in the conditions of this twentieth century is the decent thing.

It is most unfortunate to try to measure this moral duty in terms of legal obligations and ask the Court to spell out Indian legal rights from written instruments made and probably broken long ago and to put our moral duty in figures as legal damages. The Indian problem is essentially a sociological problem, not a legal one. We can make only a pretense of adjudication of such claims, and that only by indulging the most unrealistic and fictional assumptions.

Here we are asked to go back over three quarters of a century to spell out the meaning of a most ambiguous writing made in 1863. One of the parties did not keep, or know how to keep, written records of negotiations. Written evidence bearing on intention is only that which the whites chose to make. It does not take a particularly discerning eye to see that these records, written usually by Indian agents, are quite apt to speak well of the writer's virtue and good intentions. Evidence from the memory of man is no longer available. Even if both parties to these agreements were of our own stock, we being a record-keeping people, a court would still have the gravest difficulty determining what their motives and intentions and meanings were. Statutes of limitations cut off most such inquiries, not because a claim becomes less just the longer it is denied, but because another policy intervenes—the policy to leave in repose matters which can no longer be the subject of intelligent adjudication.

Even if the handicap of time could be overcome, we could not satisfactorily apply legal techniques to interpretation of this treaty. The Indian parties to the treaty were a band of simple, relatively peaceful, and extremely primitive men. The population of the band was only about 1500, and the territories claimed to have been occupied as their home consisted of over 15,000,000 acres of land in Idaho, Utah, and Nevada—about 10,000 acres for every individual in the band. Of course so few could not patrol and defend so vast a territory against inroads by the more aggressive and efficient whites. The white was a better killer. The game disappeared, the lands were not productive, and in peace the Indians became destitute. Desperation stimulated or perhaps produced predatory tendencies and they began to fall upon the overland caravans and to steal and rob. The whites brought forth their armies and reduced the Indians to submission. Then the whites "negotiated" a treatv.

We realize that for over a century it has been a judicial practice to construe these "agreements" with Indians, as if they were contracts between white men. In some cases, where the provisions are simple and definite and deal with concrete lands or matters, this may be practicable. But despite antiquity of the custom, to apply the litigation process to such a problem as we have here seems far fetched. The most elemental condition of a bargain was not present, for there was nothing like equality of bargaining power. On one side were dominant, powerful, shrewd, and educated whites, who knew exactly what they wanted. On the other side were destitute, illiterate

Indians who primarily wanted to be let alone and who wanted by some means to continue to live their own accustomed lives. Here we are asked to decide whether their intent was to relinquish titles or make reservations of titles or recognition of titles. The Indian parties did not know what titles were, had no such concept as that of individual land title, and had no sense of property in land. Here we are asked to attribute legal meanings to subscribers of a written instrument who had no written language of their own in which to express any meaning. We doubt if any interpreter could intelligently translate the contents of a writing that deals with the property concept, for the Indians did not have a word for it. People do not have words to fit ideas that have never occurred to them. Ownership meant no more to them than to roam the land as a great common, and to possess and enjoy it in the same way that they possessed and enjoyed sunlight and the west wind and the feel of spring in the air. Acquisitiveness, which develops a law of real property, is an accomplishment only of the "civilized."

Of course the Indians may have had some vague idea that thereafter they were to stay off certain lands and the white men in return were to stay off certain other lands. But we do not think it is possible now to reduce such a nebulous accord to terms of common-law contract and conveyancing. The treaty was a political document. It was intended to pacify the Indians and to let the whites travel in peace a route they somehow were going to travel anyway.

How should we turn into money's worth the rights, if any, of which the Indians have been deprived? Should we measure it in terms of what was lost to a people who needed 10,000 acres apiece to sustain themselves through hunting and nomadic living, who had no system or standard of exchange, and whose representatives in making the treaty appear to have been softened for the job by gifts of blankets and trinkets? Should we measure it in terms of what was gained to our people, who sustain themselves in large numbers on few acres by greater efficiency and utilization? Of course amends can be made only to progeny in terms of their present needs as the jurisdictional Act recognizes will ultimately be done. The Indians' grievance calls for sympathetic, intelligent, and generous help in developing the latent talents and aspirations of the living generation, and there is little enlightenment for that task from endless and pointless lawsuits over the negotiation of generations long gone to their rest.

We agree with Mr. Justice Reed that no legal rights are today to be recognized in the Shoshones by reason of this treaty. We agree with Mr. Justice Douglas and Mr. Justice Murphy as to their moral deserts. We do not mean to leave the impression that the two have any relation to each other. The finding that the treaty creates no legal obligations does not restrict Congress from such appropriations as its judgment dictates "for the health, education, and industrial advancement of said Indians" which is the

position in which Congress would find itself if we found that it did create legal obligations and tried to put a value on them.

Mr. Justice Douglas, dissenting.

I think the claims which these Indians assert are claims "arising under or growing out of the treaty of July 30, 1863."

He who comes to my abode and bargains for free transit or a right of way across the land on which I live and which I proclaim to be my own certainly That and more was done here. recognizes that I have a claim to it. of travel through this Shoshone country, the establishment of military agricultural settlements and military posts, the maintenance of ferries over the rivers, the erection of houses and settlements, the location, construction, and operation of a railroad, the maintenance of telegraph and overland stage lines were all negotiated. These provisions alone constitute plain recognition by the United States that it was dealing with people who had the power to grant these rights of travel and settlement. The United States, of course, did not need to follow that course. It could have invaded this Indian country and extinguished Indian title by the sword or by appropriation. States v. Santa Fe Pac. R. Co., 314 U.S. 339, 347, and cases cited. did not choose that course. It chose to negotiate a treaty. And through the medium of the treaty it obtained from these Indians rights of way, rights to settle, rights of transit. It was stated in Worcester v. Georgia, 6 Pet. 515, 556, that "The acceptance of these cessions is an acknowledgement of the right of the Cherokees to make or withhold them." That is good law. It is as applicable here as it was in that early case. There, to be sure, lands had been specifically set apart for the Cherokees. But that is not a material Indian title is the right to occupancy based on aboriginal pos-United States v. Santa Fe Pac. R. Co., supra. It has been the policy of the United States from the beginning to respect that right of occupancy. As stated in Mitchell v. United States, 9 Pet. 711, 746, the Indian "right of occupancy is considered as sacred as the fee simple of the whites." Thus we may not say that because these Indians had only Indian title this case can be distinguished from Worcester v. Georgia, supra. When the United States obtained these cessions it acknowledged whatever claim to the land these Indians had. The Indians ask no more now.

Moreover, the Senate in ratifying the treaty made clear that it construed the treaty as recognizing the title or claim of these Indians to this land. The amendment added in the Senate provided: "Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof." That should put beyond dispute that the Senate understood the treaty to accord recognition of the title

which these Indians had under Mexican law. To say it gives no recognition to any claim is to erase this provision from the treaty.

But if there is still any doubt as to the meaning of the treaty it should be wholly removed by another of its provisions. The treaty stated that "The country claimed by Pocatello for himself and his people is bounded on the west by Raft River and on the east by the Porteneuf Mountains."

That is now brushed aside as irrelevant. But we should remember that no counsel sat at the elbow of Pocatello when the treaty was drafted. It was written in a language foreign to him. He was not a conveyancer. He was not cognizant of distinctions in title. He neither had nor gave deeds to his land. There was no recording office. But he knew the land where he lived and for which he would fight. If the standards of the frontier are to govern, his assertion of ownership and its recognition by the United States could hardly have been plainer.

We should remember the admonition in Jones v. Meehan, 175 U. S. 1, 11, that in construing a treaty between the United States and an Indian tribe it must always be borne in mind "that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; and that the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."

When that standard is not observed, what these Indians did not lose to the railroads and to the land companies they lose in the fine web of legal niceties.

As stated by the Attorneys General of Idaho and Utah who appear here as amici curiae: "The result is that a peaceful and friendly people, lulled into a sense of security by the proffers of the United States of peace and amity, have been reduced from a nation able to wrest their living from their primitive ancestral home to a nondescript, homeless, and poverty-stricken aggregation of bands of Indians, without the means to compete in the modern civilization which had disseised them. Until the treaty with petitioners, petitioners were so strong and formidable that the trouble and expense of taking their lands by war—leaving out of account the dishonor that would have been involved in proceeding against a nation which had given no cause for war—would have far outweighed the expense of settling with them for their lands at whatever the cost in money. But the United States did

neither. Congress felt it could not at that time afford to extinguish petitioners' title by purchase. Consequently, for a meager consideration, the petitioners granted respondent certain valuable rights in those lands. For respondent, under these circumstances, to attempt to deny petitioners' title is unworthy of our country. The faith of this nation having been pledged in the treaties, the honor of the nation demands, and the jurisdictional act requires, that these long-unsettled grievances be settled by this court in simple justice to a downtrodden people."

The story has been told before. Chester Fee, Chief Joseph (1936); Harold Fast, The Last Frontier (1944).

Mr. Justice Frankfurter and Mr. Justice Murphy join in this dissent.

Mr. Justice MURPHY, dissenting.

It is a well-settled rule that in the interpretation of Indian treaties all ambiguities are to be resolved in favor of the Indians. Worcester v. Georgia, 6 Pet. 515, 582; Winters v. United States, 207 U. S. 564, 576; Carpenter v. Shaw, 280 U. S. 363, 367. While this principle does not justify ignoring the plain meaning of words in order to prevent what appears to be an injustice to the Indians, it does mean that a court is bound to give to doubtful expressions that meaning least prejudicial to the interests of the Indians, giving full weight to the conditions under which the treaty was drawn. The application of this principle to the facts of this makes manifest the error of the Court of Claims.

The issue here centers about the meaning of the Box Elder treaty of July 30, 1863, 13 Stat. 663, entered into between the United States and the Northwestern Bands of Shoshone Indians. Did the United States by that treaty acknowledge or recognize the claim of the Indians to the land in question so as to make it a claim "arising under or growing out of" the treaty for purposes of the jurisdictional act of February 28, 1929, 45 Stat. 1407? An affirmative answer to this question is dictated by both the treaty provisions and the circumstances surrounding the making of the treaty.

1. Events Preceding the Box Elder Treaty. The great westward surge of the white men from 1849 to 1863 through the country claimed by the various Shoshone tribes aroused resentment and hostility among the Indians. Game was driven away and vegetation destroyed, forcing the Indians to steal or starve. Telegraph and overland daily mail lines were established through their territory in complete disregard of any rights they might have. The Government did little or nothing to supply the Indians with food or supplies during this period. White emigrants and the Government were caused considerable trouble by depredations and warlike acts of these oppressed Indians. Some agreement whereby white emigrants could travel and the Government could maintain a communication system through the Shoshone area was imperative.

Little was done before 1861, when the Commissioner of Indian Affairs recommended that a treaty be negotiated with the Shoshone Indians which would grant them annuities "in consideration of a right-of-way across their country." In the same year the Superintendent of Indian Affairs for the Utah Territory also recommended the negotiation of a treaty, stating that the Shoshones "express their willingness to cede to the United States all the lands they claim in this Territory," with certain reservations.

In February, 1862, the Secretary of the Interior in a letter to the chairman of the House Committee on Indian Affairs acknowledged that the lands were "owned by the Indians" but reported that little was fit for cultivation and would probably not be "required for settlement for many years." He thus did not recommend the purchase of the land. In light of this letter, the House Committee on Indian Affairs recommended to Congress that it authorize the negotiation of a treaty for passageways over the land claimed by the Shoshones and not try to purchase the land.

Accordingly on July 5, 1862, Congress authorized the appointment of a treaty commission to negotiate such a treaty. 12 Stat. 512, 529. On July 22 the Commissioner of Indian Affairs instructed the treaty commissioners who had been appointed that the Government did not have sufficient knowledge to state definitely the boundaries of the country inhabited and claimed by the Shoshones but that it was understood that they inhabited "the country in the northern part of Utah and eastern portion of Washington Territories, through which lies the route of the overland mail, and the emigrant route through Utah and into Washington Territory and it is mainly to secure the safety of the travel along these routes that a treaty is desirable." He further told them that it was not expected that the treaty would be negotiated "with a view to the extinguishment of the Indian title to the land." They were told that the United States' assurances of amicable relations and the contemplated payment of \$20,000 in annuities should enable them to procure from the Indians an agreement for the security of the overland mail and emigrant routes, in addition to a "definite acknowledgment as well of the boundaries of the entire country they claim, as of the limits within which they will confine themselves."

Thus prior to the actual negotiation of the treaty, the United States recognized that the Shoshone tribes claimed and inhabited certain territory, the exact boundaries of which were uncertain. The fact that the United States thought it necessary to make a treaty concerning rights of way and the fact that the United States expressly did not desire to negotiate "with a view to the extinguishment of the Indian title to the land" strongly indicate that the United States considered the Indians as the owners of this ill-defined area of land. The securing of rights of way, which was the main purpose of the treaty, would have been a needless formality had title to the underlying land been thought to be in the name of the United States. And the securing of an acknowledgment of the boundaries of the land claimed by the Shoshones,

which was a subsidiary purpose of the treaty, would likewise have been unnecessary if the United States considered itself the owner of all the land. The stage was thus set for a delineation of the Shoshone land to which the United States was prepared to acknowledge Indian title.

2. The Negotiations for and the Contents of the Box Elder Treaty. treaty commissioners found it impossible to assemble all the Shoshone tribes They thus negotiated five separate treaties with the five They met first with the Eastern Shoshones at Ft. Shoshone Nations. Bridger, Wyoming, where they negotiated the treaty of July 2, 1863, 18 Stat. This treaty pledged peace between the United States and the Indians and pledged the United States to pay annual annuities. The Shoshones in turn agreed that routes of travel through "Shoshonee country" should remain forever free and safe for the use of the United States and its emigrants and travellers. They also agreed that the United States might establish military agricultural establishments and military posts along said routes, maintain ferries over rivers, erect houses and settlements wherever necessary for the comfort of the travellers, operate and maintain existing telegraph and overland stage coach lines, and operate a transcontinental railway "through any portion of the country claimed by" the Shoshones. The treaty further set forth a description of "the Shoshonee country, as defined and described by said nation," leaving the western boundary undefined since there were no Shoshones present from that area.

On July 30, 1863, the commissioners met with the Northwestern Bands of Shoshone Indians at Box Elder, Utah. The resulting treaty also stipulated for peace and friendship and then incorporated by reference all the pertinent provisions of the Ft. Bridger treaty. The Northwestern Bands thus granted the same rights of way and easements over their lands as the Eastern Bands had granted. The Box Elder treaty did not purport to describe all the land of the Northwestern Bands, but only the "country claimed by Pokatello [one of their chiefs] for himself and his people." This area was described as being bounded on the west by the Raft River and on the east by the Porteneuf Mountains.

Similar treaties were entered into with the Western Shoshones on October 1, 1863, the Shoshonee-Goship Bands on October 12, 1863, and the Mixed Bands of Shoshone and Bannock Indians on October 14, 1863. All these treaties were substantially the same insofar as the granting of rights of way and easements were concerned. And each of them set forth "the boundaries of the country claimed and occupied by said bands."

Thus by these five treaties the United States secured (a) freedom of travel and communication through the Shoshone country and (b) definite acknowledgment of the areas claimed by the Shoshones. While the Box Elder Treaty did not define the boundaries of the Northwestern Shoshone lands completely, reference to and collocation of the territorial descriptions in the other four treaties, as well reference to the map prepared at the time by the

chairman of the treaty commission, supply the territorial boundaries of these lands.

The very acceptance in the Box Elder treaty of these rights of way and easements constituted a recognition and acknowledgment by the United States that the Northwestern Bands had title to the land claimed. cester v. Georgia, 6 Pet. 515, 556; Fort Berthold Indians v. United States. 71 C. Cls. 308, 332. Such recognition and acknowledgment need not be indicated by any particular word or phrase. They may be implied as well as That is the case here. The Box Elder treaty and the four expressed. other treaties would have been meaningless had the United States not thereby recognized the Indian title to the land claimed. Without such title. the Indians would have lacked power to bargain concerning the right to travel and communicate over the land. Recognition of this power to bargain and acceptance of the fruits of that bargaining implied recognition of the underlying Indian title to the land. Otherwise there would have been no reason for the United States bothering to negotiate. Unilateral assertion of rights would have been resorted to had the United States not recognized Indian title to these lands. This is true whether the Indians held title based on aboriginal possession or whether they held lands specifically set aside for them. It is likewise immaterial that the main purpose of the treaties was to secure rights in the land rather than to acknowledge or secure title. securing of those rights necessarily presupposes Indian title and necessarily recognizes such title.

Thus by its action in negotiating for and securing rights of passage and communication, the United States indicated its recognition and acknowledgment of Indian title to the land. The descriptions of the lands claimed by the various tribes were inserted merely to give the United States knowledge of the precise boundaries to the land held by the Indians. The fact that these treaties and the Box Elder Treaty in particular speak in terms of land "claimed" by the Indians does not negate recognition of title to the land so claimed. In the context of these treaties and in light of the ignorance of the Indians of legal niceties, the term "claim" need not be taken to mean bare assertion to title. It must be remembered that these Indians held title by aboriginal possession and that the United States was in no position to bargain as to the scope of the land so held. A bona fide Indian claim of this type is synonymous with ownership unless it conflicts with some other ownership or unless such an Indian title is unrecognized in law. Here, however, the United States did recognize this type of ownership and was anxious merely to ascertain the scope of the land so claimed or owned. The placing of these descriptions in a bilateral treaty is at least consistent with the conclusion that the United States recognized title to the extent of the lands claimed. And under the rule that ambiguities are to be resolved in favor of the Indians, we must adopt that conclusion.

3. Events Subsequent to the Box Elder Treaty. Any doubt as to whether

the United States by these treaties recognized and acknowledged Indian title to the land claimed is removed by actions and statements of the Government subsequent to the making of these treaties.

The Senate ratified each of the treaties. To four of them, including the Box Elder treaty, the Senate added an amendment providing that nothing in the treaty should be construed to admit "any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof." See 13 Stat. 664. Whatever may have been the complexities of the Mexican cession title situation as described in the opinion of this Court, the Senate by this amendment clearly indicated that it understood each treaty to constitute a recognition of Indian title to the land claimed, at least as to lands outside the Mexican cession. Had the Senate been under the impression that no title rights were involved in the treaties it would have been meaningless to add this amendment. Resolving any doubts on this score in favor of the Indians compels us to interpret this amendment as another recognition of Indian title.

In 1863 the Commissioner of Indian Affairs recommended that further treaties with the Shoshones be negotiated to extinguish their title to the soil. And Congress in 1865 authorized the President to enter into treaties with Indians in the Utah Territory for the surrender to the United States of their possessory right to all agricultural and mineral land and for their segregation on reservations. 13 Stat. 432. Accordingly a treaty was made with the Eastern Shoshones in 1868 whereby they gave up the territory claimed by them in the Ft. Bridger treaty in exchange for other lands. 15 Stat. 673. Here again is clear proof that the United States considered title to the land to belong to the Indians, making even more compelling the conclusion that the 1863 treaties constituted a necessary recognition of that title.

And as late as 1934 the Secretary of the Interior admitted that the territory of the Shoshones "was recognized by the United States as belonging to the various bands of Shoshone Indians" by the 1863 treaties and that the "Government recognized all the land as belonging to the Northwestern bands of Shoshones." Such statements are more than justified by the history and contents of the treaties.

One final matter remains. It is said that any money recovered by the Indians in this suit would have to be deposited in the Treasury of the United States, subject to appropriation by Congress for their benefit, and that the only possible cash payment involves attorney fees. That may be true. But it does not justify ignoring the rights of the Shoshone Indians recognized under solemn treaties entered into with the United States. It does not command us to overthrow the moral obligation of the United States to fulfill its treaty obligations. And it does not warrant the application of narrow principles of construction to the injury of the Indians' interests. If Congress desires to place in the Treasury any money that might be recovered by the

Indians in this suit that is the business of Congress, not ours. Our function here is at an end when we have determined if the Northwestern Bands have any claim "arising under or growing out of" the Box Elder treaty. Because I believe they have such a claim I would reverse the judgment below.

Mr. Justice Frankfurter and Mr. Justice Douglas concur in this opinion.

THE CRISTOBAL COLON

BERMUDA SUPREME COURT

[October 18, 1937]

Plea of sovereign immunity by Spanish Government based on ownership by nationalization of merchant vessel recognized.

A writ of summons in rem was issued in this action and served about the 6th of January, 1937, by Mr. John Strong McBeath, the Superintendent of Police, (1) on the Cristobal Colon by affixing a copy to her foremast, (2) on the apparel of the said ship lying in the King's warehouse in the Town of St. George by affixing a copy on the door of the said warehouse, and (3) on the Receiver of Wrecks by delivering a copy to him personally and showing him the original thereof at the time of such service.

Mr. James Eugene Pearman states in his affidavit that he interviewed Captain Navarro of the Ship at St. George's on or about the 25th of November, 1936, and was shown all the ship's papers, taken by the master from the ship, which were written in the Spanish language but were translated by the master and the purport explained to him in English. Mr. Pearman also states in his affidavit that on the ship's articles which were shown to him the last entry showed that the ship departed from Cardiff in the British Isles on the 16th October, 1936. Mr. Pearman also stated that certain documents were shown to him and their purport explained to him by the master. The original documents have not been produced or if they are in the hands of the Spanish Government I have no record that a notice to produce them has been given to the Spanish Government, or if they cannot be produced no leave has been obtained to admit secondary evidence.

If the master was the agent of the Spanish Government, an assumption which really begs the question, an admission on his part might be binding on that Government. In the absence of an application to give secondary evidence of the contents of the documents, I am of opinion it is inadvisable to consider it.

Senor Emilio Suarez Fiol in his affidavit states that the *Cristobal Colon* belonged to the plaintiffs who had possession, control and management of her both prior and subsequent to the 7th August, 1936. On that date by a decree signed by Senor Manuel Azana and Senor Bernardo Giner de los Rios "the so called Loyalist Government decreed that the State confiscated in the

cause of public interest the Companis Transatlantica itself as well as all its capital stock, deposits, warehouses and whatever assets or effects it possessed." He further states that "It seems that shortly after the 7th day of August, 1936, the steamship Cristobal Colon was seized at the port of Santander in the name of the so called Loyalist Government" and "the said steamship was consequently under requisition of the so-called Loyalist Government at the time when she became stranded on the rocks near the Town of St. George in the Island of Bermuda." Senor Suarez Fiol also included in his affidavit what is apparently a translation of Article 44 of the Spanish Constitution. As I have already fully explained the method of presenting foreign law to a British Court I need not repeat it here.

The ship was arrested by warrant on the 28th July, 1937. In a letter dated the 25th August, 1937, put in evidence with the affidavit of the Hon. R. W. Appleby, to which no exception has been taken, it is stated that the *Cristobal Colon* went ashore on the Bermuda coast last November."

Senor Antonio de la Cruz Marin in his affidavit states (a) that he is the Counsellor of the Spanish Embassy in London, a Spanish lawyer and a Doctor of Law of the University of Madrid, (b) that the Cristobal Colon is subject to decrees of the Government of Spain dated respectively the 7th August, 1936 and the 10th May, 1937 and published in the Official Gazette of the said Government, (c) that the publication of the said decrees has the legal effect of making such Decrees laws of the Republic of Spain and binding on all Spanish subjects, (d) that prints of the said Official Gazette containing the said decrees together with translations into English of the said decrees were produced and shewn to him, (e) that the said decrees as published in the said Official Gazette were signed by Manuel Azana, the President of the said Republic and Bernardo Giner de los Rios, Minister of Communications Transport and Public Works, and the translations therefore are accurate, (f) that in pursuance of the said decrees the Government of the Republic of Spain is now entitled to and claims possession of the said ship, (g) that the present proceedings implead the Government of the Republic of Spain, which is a foreign Sovereign State recognized by His Majesty's Government, and (h) that the Government of the Republic of Spain is unwilling to submit to the jurisdiction of this Honourable Court.

I am in receipt of the following communication:—

Colonial Secretary's Office, Bermuda. 9th October, 1937.

Sir:

In consequence of enquiries by Your Honour and by the attorneys of the Spanish Government in the case of the "Cristobal Colon," I am directed by His Excellency the Acting Governor to inform you that His Excellency has been in communication with His Majesty's Government and has the author-

ity of His Majesty's Principal Secretary of State for the Colonies to state that His Majesty's Government recognises the Spanish Government as being the Government of the Republic of Spain.

I am, Sir, Your obedient servant,

> By Command C. H. V. TALBOT Acting Colonial Secretary.

His Honour,

The Acting Chief Justice,
Hamilton.

Officially I have no information as to the actual date the Cristobal Colon "went ashore" or "stranded" on these Islands. As Mr. Pearman states in his affidavit, he interviewed the master on or about the 25th November, 1936 at St. George's and then the master had with him the ship's papers. Mr. Pearman also states that he saw an entry to the effect that the ship departed from Cardiff on the 16th October, 1936. I may assume the ship went ashore or stranded on these Islands between the 16th October, 1936 and 25th November, 1936.

Also I have no evidence as to who has the de facto possession of the ship. A copy of the writ of summons in rem was served on the Receiver of Wrecks, who has not appeared. I may assume that if there is any de facto possession it is in the Receiver of Wrecks. It cannot be in the plaintiffs, as it would be absurd for them to bring this action for possession. The Spanish Government does appear not to be in de facto possession as Senor de la Cruz Marin states that the Government of the Republic "is entitled to and claims possession of the said ship," not that it is in possession. It therefore appears that the only possession at issue between the plaintiffs and the interveners is the de jure possession. As the Receiver of Wrecks has not appeared to the writ served on him it appears that he does not propose to intervene in matter.

In the early stages of the action the Hon. the Attorney General entered and appeared with the object of giving notice of a claim by the Colonial Government for the expenses of maintenance and repatriation of the master and crew of the ship. He informed the Court at the hearing on the 27th of July, 1937 that the expenses were paid and that the ship was in the custody of the Receiver of Wrecks. He further intimated that as the claim had been paid he had no further official interest in the matter.

Mr. D. C. Smith for the Spanish Government referred to the remarks on the first day of the hearing of the motion made by Mr. Appleby (who on account of illness has not been able to attend on subsequent days). He also referred to the affidavit of Senor de la Cruz Marin: that as a Spanish lawyer Senor de la Cruz Marin had told the Court what is, and the effect of, the Spanish law as to the possession of the ship. He also referred to the affidavit

of Senor Suarez Fiol which admits the Decree of the Spanish Government dated the 7th July, 1937. Mr. Smith cited the Gagara (1919), P., pp. 95, 100, 102; the Jupiter, P., p. 236, 242.

Mr. Conyers submitted that there was no evidence that the ship was manned with Spanish Government men, that in the affidavit of Senor de la Cruz Marin there was nothing to show that "the prints" are original Official Gazette or copies of the original Official Gazette, that on the general principles of law it is necessary for the Spanish Government not only to show actual possession but to show that the ship is being used in the public interest before that Government can claim that the ship is immune from the jurisdiction of this Court. He cited the Parlement Belge (1880), 5 P. D. 53; the Charkieh (1873), 28 L.T.R., pp. 190, 513. He also referred to Dicey's Conflict of Laws (5th E.), p. 194.

Mr. Conyers also pointed out that the *Cristobal Colon* was not within Spanish jurisdiction when the decree of the 11th of May, 1937 was made, as she was then stranded on these Islands and the summons *in rem* had then been served.

Mr. Conyers also stated that the plaintiffs filed the affidavit of Senor Surez Fiol because they desired the court should have all evidence available—a practice this Court cannot too highly commend. Mr. Conyers did not comment on the question whether the Spanish Government is the Government of the Republic of Spain, an independent sovereign state recognized by His Majesty's Government. Mr. Conyers drew attention to the comment—Foreign Sovereign—in Dicey's Conflict of Laws (Ed. 5), P. 194, and to the statement concerning an International agreement arrived at a Maritime Conference at Brussels in 1926, and stated that he could not produce a copy of that agreement.

Mr. Smith in reply stated that the decree the Spanish Government particularly claimed under was the decree of the 7th July, 1936.

With regard to the agreement at the Maritime Conference at Brussels in 1926, no legislation to give effect thereto can be traced and consequently I am unable to consider that agreement as binding without more definite information, which the plaintiffs have not furnished and I am unable to find.

The first question I have to decide is whether the Spanish Government is recognized by His Majesty's Government as the Government of the Republic of Spain, an independent sovereign state. The above letter sent to me by command of His Excellency the Acting Governor is conclusive on this point: Duff Development Co., Ltd. v. Government of Kelantan, L. R. (1924), A. C. 797; Mighell v. The Sultan of Johore (1894), 1 Q.B.D. 149, 158, 161.

The letters referred to in and forming a part of the affidavit of Mr. Appleby and the affidavit of Senor de la Cruz Marin show that the Republic of Spain has an embassy in London. The learned counsel for the plaintiff referred to these letters in his address but did not take exception to the admission of the same as evidence.

There are a number of cases on this question, but as the learned counsel for the plaintiffs in his address on this motion did not argue or mention this matter it only remains for me to state that I am of opinion that the Spanish Government is recognized by His Majesty's Government as the Government of the Republic of Spain, an independent sovereign state.

In the Parlement Belge (1880), 5 P. D. 197, 214, Brett L. J., after exhaustively reviewing all the earlier cases, stated:—"The principle to be deducted from all these cases is that, as a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence and dignity of every other sovereign state, each and every one declines to exercise by means of its Courts any of its territorial jurisdiction over the person of any sovereign or ambassador of any other state or over the public property of any state which is destined to public use, or over the property of any ambassador, though such sovereign, ambassador, or property be within its territory, and, therefore, but for the common agreement, subject to its jurisdiction."

The above passage was quoted with approval by Lord Esher in *Mighell* v. *The Sultan of Johore* (above) and also by Bankes L. J. in the *Gagara* (1919), P. 95, 100, and is authoritative.

The next question I have to consider is whether the Cristobal Colon is the property of the Spanish Government. Senor de la Cruz Marin in his affidavit states, that the decrees of the Spanish Government of the 7th August, 1936 and 10th May, 1937 have the legal effect of making such decrees laws and binding on all Spanish citizens, and in pursuance of those decrees the Government of the Republic of Spain "is entitled to and claims possession of the saidship." Senor Suarez Fiol in his affidavit states that "on the 7th August, 1936 by a Governmentary decree the State confiscated in the cause of public interest the Compania Transatlantica itself as well as all its capital stock deposits, warehouses and whatever assets or effects it possessed." He also states that "the said steamship was consequently under requisition of the so called Loyalist Government at the time she became stranded on the rocks near the Town of St. George in the Island of Bermuda." He also states that the Cristobal Colon was seized in the name of the "so called Loyalist Government" at Santandar shortly after the 7th August, 1936.

These admissions of Senor Aurez Fiol may be regarded as authoritative as if made by Senor de la Cruz Marin on behalf of the Spanish Government.

Learned counsel for the plaintiffs argued that as the Cristobal Colon was stranded on these Islands when the decree of the 10th of May, 1937 came in force it could not affect the said ship, as she was then out of the jurisdiction of the Spanish Government. However, if the Cristobal Colon "was seized in the Port of Santander in the name of the so called Loyalist Government" shortly after the decree of the 7th day of August, 1936 she must have then been in the jurisdiction of the Spanish Government. This fact has not been disputed.

In the Jupiter (1924), P. 236, the case of a Russian ship which was confiscated by the Soviet Government under a nationalization decree, Bankes, L. J. stated:—"It seems to me that the necessary result of these proceedings is to call upon the Soviet Government to assert its title, and to have the question of the ownership, or the right to possession of this vessel, litigated in the Courts of this country. That is not admissible." And Scrutton, L. J. stated:—"This writ being addressed to the steamship Jupiter and all persons claiming any right or interest in the steamship, the foreign Government which does claim a right or interest in the ship must do one of three First, it may appear to defend, but it cannot be compelled to appear; secondly, if it were not to appear and let the action go on, the Court might feel able to forfeit the property of a foreign sovereign; thirdly, it can come to the Court and say, 'I am not going to discuss what my title is; I say I am a foreign sovereign; I claim a right in this property, and you cannot compel me to come to your Court to show you that I have good cause for saying that it is my property."

In Aksionairnoye Obschestvo A. M. Luther v. James Sagor & Co. (1921), 3 K. B. 532, 555, Scrutton L. J. stated:—"If M. Krassin had brought these goods with him into England, and declared on behalf of his Government that they were the property of the Russian Government, in my view no English Court could investigate the truth of that statement," and, again, "I cannot conceive the Court's investigating the truth of its allegation that the goods in question, which it exported from its own territory, are its public property."

As far as this motion is concerned I am dealing with a ship which admittedly, from the affidavits filed herein, always has been Spanish and, prima facie, is subject to Spanish law. From the two last mentioned cases it is clear that I cannot go into the merits of questions arising from the Decrees of the Spanish Government. To put the Spanish Government to proof of its claim would result in pleading the recognized Government of Spain, which is not admissible. Additional cases in which the question was discussed are the Broadmayne (1916), 64; the Gagara (1919), 95.

Learned counsel for the plaintiffs submitted that there was no evidence that the *Cristobal Colon* was manned with Spanish Government men and that the Spanish Government must show not only actual possession but show that the said ship is being used in the public interest before that Government can claim that the said ship is immune from the jurisdiction of this Court. He also raised the question of "the prints" of the decrees but this last matter was settled by me on the preliminary objections and it is only necessary for me to say as I have already said, that I am not concerned with the decrees except in so far as what Senor de la Cruz, a Spanish lawyer, has stated in the effect of the same.

For some years it was doubted whether the decision in the Parlement Belge (above) had really decided that immunity from the jurisdiction of the Courts applied to a ship belonging to a recognized government and engaged in trade. The decision of Sir Robert Phillmore in the *Charkieh* (1873), L. R. 4 A. & E. 59, 100; 28 L.T.R. 190, 513, gave some foundation that the immunity did not extend to a ship engaged in trade but that case has since been overruled by the decision of the Court of Appeal in the *Porto Alexandre* (1920), P. 30.

The Porto Alexandre was originally a German ship but was seized as a lawful prize by the Portuguese Republic. She had been requisitioned by the Portuguese Republic and handed over to the Commission of Services and Transports Maratims, and was being employed in ordinary trading voyages earning freight for that Government. She was sent on a voyage from Lisbon to Liverpool and then grounded at the entrance of the Mersey. Tugs rendered her salvage service. An action in rem was commenced on behalf of the owners, masters and crews of the tugs in respect to the service rendered and the Portuguese Government intervened. The motion to set aside the writ and all subsequent proceedings was granted by Hill J. On appeal, Bankes L. J. stated:—"The applications which the learned judge granted was founded upon the contention that the vessel was the property of a Sovereign state, the Republic of Portugal, and, on that ground, that she was exempt from arrest. The conclusion of fact at which the learned judge arrived was that it had been established that the ship was the property of the Portuguese Government at the time of her arrest, and is still their property, and on that ground he made the order."

Later in his judgment the learned judge stated:—"The function of this Court in this particular case is to decide whether it is covered by the Parlement Belge. I think it is, and it is therefore not necessary or desirable that the Court should enter upon a discussion of the wider question at this stage, or consider the importance of other views that may be taken. There is very little difference between the material facts in the Parlement Belge and in the present case and in my opinion the Parlement Belge is an authority which covers the present case.

"It is quite true that in many of the earlier cases the claim put forward, with regard to a particular ship, was that she was on public service and employed in the public service, and no doubt the statement so made was applicable to the particular case, and was made because it was applicable to the particular case, and the judgments were delivered in reference to the facts so stated. But in this case the Court is bound by the decision in the Parlement Belge and the appeal must be dismissed with costs."

Senor Suarez Fiol states in his affidavit that the said ship was, in consequence of her seizure at Santander, "under requisition of the so called Loyalist Government at the time she stranded on the rocks near the Town of St. George in the Island of Bermuda." From that it is clear that at the time the *Cristobal Colon* came within this jurisdiction she was then under requisition of the Spanish Government.

It has been definitely decided that a ship under requisition to His Majesty's Government or to a foreign sovereign is immune from arrest. The *Broadmayne* (1916), 64, the *Messicano* (1916), 32 T.L.R. 19.

The quotations from the judgment of Bankes L. J. in the *Porto Alexandre* and the cases quoted, in my opinion, dispose of the questions whether the *Cristobal Colon* was manned by Spanish Government men and whether the ship was being used in the public interest.

This case differs from all other cases in that the Spanish Government claiming the *Cristobal Colon* did not appear to have, when this action began and since, the *de facto* possession of the said ship.

It is well settled by the Courts that where de facto possession is undetermined, such as where it is equally consistent with the facts that possession may be in one person or another, legal possession attaches to the right to possess and the title of the one who can prove the right to possess prevails. Littleton's Tenures, 701, Ramsay v. Margarett (1894), 2. Q. B. 18, C. A.; Antoniadi v. Smith (1901), 2 K. B. 589, C. A.; French v. Gething (1922), 1 K. B. 236 C. A.

My decision concerns a ship which is admittedly Spanish, requisitioned by and seized by the Spanish Government and, prima facie, subject to Spanish law with regard to title and transfers of ownership. I cannot go into the merits of the question whether the nationalization decrees applied or have since been applied to the Cristobal Colon. See the remarks of Hill, J. in the Jupiter (1924), P. 239. I cannot require the Spanish Government to prove its right to the possession of the Cristobal Colon beyond what has been voluntarily stated by Senor de la Cruz Marin and admitted by Senor Suarez Fiol. To do so would implead the Spanish Government.

As between the Spanish Government and a Spanish company concerning the right to possess a ship, prima facie, subject to Spanish law, I must accept the statement of the Spanish Government in view of the facts, voluntarily submitted and admitted, as conclusive that the Spanish Government is entitled to the possession of the Cristobal Colon.

For the above reasons I must grant the motion and set aside the writ and all subsequent proceedings, with costs.

BOOK REVIEWS

An International Bill of the Rights of Man. By H. Lauterpacht. New York: Columbia University Press; 1945. Pp. x, 230. Index. \$3.00.

Rarely is it given to an author to have the satisfaction of seeing a daring projection into the untried largely realized between the time of the completion of his manuscript and its publication. The manuscript of this book by the Whewell Professor of International Law in Cambridge was completed in the autumn of 1943 and the author was able to insert later only a page referring to the subsequent appearance of the Dumbarton Oaks Proposals. United Nations Charter of San Francisco was not then even on the schedule of future international events. Yet that Charter marks not one milestone but several upon what most international lawyers would have considered a few years ago a very long road to the international recognition and protection of the rights of man. This reviewer penitently acknowledges that if he had had the opportunity to review this gallant book before the San Francisco Conference of the United Nations, he would have classified it among the patterns of Utopia; today it is a useful handbook for officials of foreign offices and governmental representatives on the Preparatory Commission which, as this review is written, is preparing in London the agenda for the first session of the General Assembly to the United Nations. Even in the disrupting contemplation of the atomic bomb and its effect upon international relations, it is not too pessimistic to assert that Professor Lauterpacht's proposals still extend into the future and will not be realized all at once, but he is dealing with a vital current issue. Though one must be on one's guard against millennial relaxation, one can be inspired by the anticipation of revolutionary developments.

"An International Bill of the Rights of Man," says the author, "can be conceived either as a political declaration embodying a philosophy and principles of government for the guidance of States and of public opinion or as a legal instrument creating definite and enforceable legal rights and duties between States and their nationals and between States themselves. The present Draft of the International Bill of the Rights of Man is based on the latter conception." But, the traditionalist may object, such a concept does violence to the basic philosophical concept of the Law of Nations as a law determining the rights and duties of States. Professor Lauterpacht calmly admits that one of the "revolutionary innovations" of the Bill "is to do away with the antiquated doctrine that the individual is the object, and not a subject of the Law of Nations." He does not propose, on the procedural side, that individuals should have direct access to an international judicial authority but he does provide a legal right of petition which would set in motion "an international procedure of investigation" by an international

agency. Under Article 68 of the Charter of the United Nations it is mandatory for the Economic and Social Council to set up such an agency (though its functions are not specified) described as a "commission for the promotion of human rights". According to the Report to the President on the Results of the San Francisco Conference, by the Chairman of the United States Delegation,¹ "the commission on human rights will have the opportunity to work out an international bill of rights which can be submitted to member nations with a view to incorporation in their fundamental law, just as there is a Bill of Rights in the American Constitution." Such a commission may be expected to begin study of its difficult tasks within the next six months.

Three-fourths of this book is devoted to the text and an explanation of the text of the draft of an International Bill of the Rights of Man. The first quarter contains a philosophical discussion of the idea of natural rights in legal and political thought, of the law of nature, and of natural rights in British constitutional law and political theory. The theme of this historical survey of thought is that "With isolated, though important exceptions, the idea of the inherent rights of man is the continuous thread in the pattern of history in the matter of that weighty issue of the relation of man and State." The author's account from the Greek philosophers down through decisions of the Supreme Court of the United States, is capped by the Charter's reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human person" and by its seven references to human rights and fundamental freedoms.

The idea of such an international bill of rights is not at all new, but Professor Lauterpacht's great contribution lies in the fact that he has brought the idea into focus and has elaborated his plan and his arguments with a quiet and moderate assurance which, in the light of developments, makes the book The reviewer missed any reference to the work of particularly persuasive. the American Law Institute, and it may be that the references to comparative constitutional law would have been even richer if that study had been One of the strong points of the argument is the breadth of the supporting legal data, as one would expect from the editor of the Annual There is a somewhat curious caution larded in with the bold assertions and proposals. For example, it is admitted that a "declaration of the rights of man is incomplete without an attempt to redress the legal inferiority of women," but "existing possibilities" and the "necessity of not impeding the acceptance of the Bill" induced the author to omit it. Here he falls behind San Francisco. Similarly "equality of status for aliens" is omitted as not "feasible"; the reasons added here by the author are persuasive, except that by citing numerous treaties on the rights of aliens for the proposition that such a specification is unnecessary, he merely shows that this is one topic on which states have already been prepared to act internationally, even if fragmentarily. Again, in the midst of a strong passage expounding the

¹ United States Department of State, Publication No. 2349, June 26, 1945, p. 118.

basis and importance of Part II of his Bill dealing with the political independence of the individual as one of the "fundamental rights of freedom", the structure is suddenly shattered by an alternative: ". . . these rightsor claims-. . ." On the question of racial equality which the Charter did not dodge, Professor Lauterpach't yields to the argument of practical politics with an eye on the United States and the Union of South Africa. "So long," he writes "as there is no wholesale disfranchisement on account of race, colour, and religion, it is wise and proper that the Bill of Rights should depend upon the gradual operation of public opinion and the watchfulness of courts. . . ." This is sound caution but wholly out of key in the general theme. It is perhaps the greatest weakness in the book, being weak by its very effort to lean strongly on the rock of practicality. This is not to say that the author should be criticized for attempting to draw up a practical plan, which, as already noted, has become even more practical than he could have dared to hope. It is to say that the author's own yielding on certain basic problems in the field of human rights inevitably subjects to attack by the same arguments, the assertion of those rights upon which he thinks there should be no yielding despite political opposition.

The proposed Bill is divided into three Parts. Part I "enumerates those fundamental rights of freedom in the wider sense which the signatories undertake to incorporate as integral parts of their law and constitution . . . and which, subject to supervision and eventual enforcement by international organs (Part III) will be normally given effect by the municipal courts of States. Here one finds provisions on such subjects as slavery, freedom of religion, speech, assembly, the right to a nationality and the right of emigration and expatriation. Part II "enumerates what may be called the political, cultural, economic and social rights of freedom" such as the right to government by consent, the rights of minorities and the rights of dependent peoples. On the last point the author of course did not have the advantage of the Charter's provisions on Trusteeships, since the Dumbarton Oaks Proposals did not mention this topic. Part III deals with the "implementation, supervision, and enforcement" of the Bill by both national and international agencies. In dealing with enforcement, Professor Lauterpacht faces the hard problem of giving the provisions of the Bill "constitutional" status in countries having no written constitution. problem is obviously that of embodying the bill in some legal form less easily modified or revoked than the ordinary legislative act. Similarly, from the international point of view, the author is seeking to establish "a treaty of a constitutional and potentially universal character." The Charter may be considered such an instrument. There is an interesting discussion of the problem of judicial review within each state in the light of the fact that in many states this function of the courts is not accepted. Professor Lauterpacht attaches such importance to the protection of the individual through national courts, that he insists upon States accepting the power of their

courts to declare a law to be in conflict with the International Bill of Rights. He is willing to agree, however, that this pronouncement need not have any direct domestic legal effect; it would be a starting point for the operation of the international machinery. On international enforcement, Professor Lauterpacht argues ably for the "radical innovation" which declares that "the protection of the rights of the individual" is "the task of the Law of Nations." This innovation has in effect been introduced by the United Nations Charter although it remains for the Economic and Social Council or its Commission on Human Rights, to begin to put meat on the bones. Those bodies will find useful suggestions in the author's exposition of Part III of his Bill. The reviewer suggests one weakness in his argument in favor of the sound procedure of establishing a right of petition to an international authority, and that weakness is the underestimation of the volume of petitions which would be filed if the system were fairly and freely established; or perhaps his phrase "a considerable number" does connote millions. sheer magnitude of any of these tasks when put on the footing of world organization is staggering and presents a very genuine obstacle to the success of some of the new experiments. It may be that in the matter of human rights as in other cases, there will be a proper resort to regional organization under the United Nations. Professor Lauterpacht sums up his own concept of the future of international organization in relation to his topic:

It [the acceptance of the International Bill of the Rights of Man] would be one of the factors working toward the accomplishment of the final political aim of organized society, namely, the establishment of a Federation of the World as an essential prerequisite of the development of the capacities of the human race through progress and peace. It is unlikely, as it is probably undesirable, that that end can be achieved at once—vertically as it were—by any radical and rigid scheme of World Federation. It is more probably capable of achievement by the gradual evolution of institutions, arrangements, and effective obligations which in the fullness of time—horizontally as it were—will lead the looser association of States as expressed in the existing or any future League of Nations, to a more integrated Federation of States. . . . In that perspective the consideration of the minutiae of the supervision and enforcement of the Bill of Rights appears in its rightful and proper significance.

PHILIP C. JESSUP

Of the Board of Editors

Collection of International War Damage Claims. By René Wormser. New York: Alexander Publishing Co.; 1944. Pp. xv, 411. Appendix. Index. \$7.50.

This timely volume is intended to be, in the words of the author, "a practical guide for laymen and lawyers to the kinds of war damage claims that may be presented, the rules which govern their allowance, and the methods of presentation, proof and determination." However, its actual

scope is considerably broader than the title indicates, almost one-half of the entire book (its length is really 276 pages: 120 pages of appendices reproduce extracts from the peace treaties of World War I, agreements relative to the United States-Germany Mixed Claims Commission, and the Settlement of War Claims Act of 1928) being devoted to a discussion of state responsibility for damages to foreigners and the general law of international reclamations. While some development of the principles which control the presentation and proof of diplomatic claims would have been warranted as an aid to claimants in war damage cases, there hardly seems justification for including in a work of this kind a ten-chapter study embracing such matters as the local remedy rule, denial of justice, arrest, detention and imprisonment by the civil authorities in time of peace, mob violence, breach and cancellation of government concessions, and defaults in government bonds. The treatment of these subjects is perilously general and superficial; and, although unquestionably useful to the non-specialist reader as an introduction to and outline of the law applicable, may mislead the lawyer who relies too heavily thereon in preparing his case. More thorough studies are available elsewhere.1

The portions of the book which deal with war damage claims properly so-called (Chapter XI and ff.) contain summary expositions of such matters as acts of war and the military, acts of soldiers, acts of revolutionaries, seizure and requisition of property, damage due to sabotage, and cognate questions. It is the author's admitted purpose to offer only "a quick survey of a large subject." But the value of the work as a whole is reduced by exclusive utilization of Anglo-Saxon sources. Secondary materials are referred to throughout on the plausible ground that primary documents are seldom available to the average attorney. It is nevertheless puzzling that Professor Lauterpacht's Annual Digest of Public International Law Cases is nowhere cited, although the prodigious mass of international and domestic jurisprudence which it assembles would appear to be indispensable to an examination of war damage claims. Another serious omission is the absence of any discussion of existing legislation in the United States under which various categories of claims based upon damage arising from military activities can be settled by direct recourse to agencies instituted by the War Department for that purpose (cf. the Act of July 3, 1943, 57 Stat. 372; 31 U.S.C. § 223b, implemented by Army Regulation 25-25, July 3, 1943; and especially the Foreign Claims Act of January 2, 1942 (55 Stat. 880) as amended by the Act of April 22, 1943 (57 Stat. 66); 31 U.S.C. § 224d, implemented by Army Regulation 25–90, July 3, 1943).

Considering the role of air power in the great conflict that has recently

¹ Cf. E. M. Borchard, The Diplomatic Protection of Citizens Abroad, New York, 1916; A. V. Freeman, The International Responsibility of States for Denial of Justice, London, 1938; and J. H. Ralston, The Law and Procedure of International Tribunals, Stanford, 1926, and Supplement, 1936.

terminated and the tremendous damage inflicted by aerial bombardment, a more extensive survey might have been expected than the four pages presented under that heading. It is to be feared that on a considerable number of the other topics treated, the student and lawyer alike will find this volume inadequate. The definitive treatise on war claims yet remains to be published. Until then, Wormser's book should prove valuable as a compendious summary of principles applicable to the settlement of such claims.

ALWYN V. FREEMAN

J.A.G.D., War Department

Model Bilateral Conventions for the Prevention of International Double Taxation and Fiscal Evasion. By the League of Nations Fiscal Committee. Geneva: League of Nations; 1945. Pp. 85.

For a better understanding of the conventions for the avoidance of double taxation of both income and inheritances which the United States has concluded with France, Sweden, and Canada, all of which are in effect, as well as those with Great Britain and Northern Ireland, which are awaiting ratification, this brochure is invaluable.

Using as a basis for detailed comment and explanation the three model bilateral conventions drafted at a conference held in Mexico City in July, 1943, the first for the prevention of the double taxation of income, the second to prevent superimposed levies on successions, and the third for the establishment of reciprocal administrative assistance for the assessment and collection of taxes, this booklet epitomizes as simply as possible the solutions most widely favored for the complex problem of reconciling conflicting principles of tax liability and practices in most of the commercial nations of the world.

Perhaps no work of the League has been less heralded yet more enduring than that in the field of removing the barriers to international trade and investments resulting from liability to taxation simultaneously in two or more countries of the same income or property. Begun with studies of economists in 1923, continued with proposals of tax officials and experts which eventuated in a general meeting at Geneva in 1928 of representatives of twenty-eight countries, and further refined by the Fiscal Committee which brought about the regional meetings of Western Hemisphere officials and experts in Mexico in 1940 and 1943, this pioneering work in developing international tax law has constantly progressed.

The proof of its usefulness is evinced by the more than sixty general conventions concluded up to the outbreak of World War II, and, from our viewpoint, by the treaties which our own Government has concluded, and is today negotiating, along the lines formulated by the League experts. In this brochure the anonymous secretary of the Fiscal Committee, Mr. Paul Deperon, of Belgium, sums up in very readable language the results of more than twenty years of continuous effort, to which he has contributed a great

deal under the direction of Mr. Alexander Loveday, Director of the Economic, Financial, and Transit Department of the League. It should prove useful not only to taxpayers affected by the treaties now in force but also to Government officials charged with their administration, and to officials of the United Nations organization who may wish to continue the work of the Fiscal Committee under the aegis of the Economic and Social Council.

MITCHELL B. CARROLL

New York City

Annual Digest and Reports of Public International Law Cases, 1941-1942. Edited by H. Lauterpacht. London: Butterworth; 1945. Pp. xxxvi, 651. 55/-.

This tenth volume of the Annual Digest is the largest of the series, nearly twice as large as the first volume, representing the years 1919–1920. The increase in size has resulted from a more complete reporting of cases rather than from an increase in the number of cases. The Digest has, in fact, become to a considerable extent, a Reporter. The editor states that the users of the series have "emphatically and repeatedly" supported the policy of reporting cases in full. It is, therefore, hoped that in the future annual reports rather than biennial digests will be published.

The original classification has been little altered. The present volume is a war volume in the sense that it contains few reports from international tribunals and many reports from national tribunals on war problems. interest in the latter connection are two opinions from United States courts, one holding that "war" as used in an insurance contract existed when a seaman on the Reuben Jones was killed on October 30, 1941, and another holding that the death of a seaman of the United States Navy, killed at Pearl Harbor on December 7, 1941, did not occur in time of "war" (pp. 434, Interesting reports deal with the status of United States Indian tribes, of Ireland, and of Mysore, and with problems of recognition, of succession, of extraterritorial jurisdiction, of exemptions from territorial jurisdiction, of diplomatic and consular immunities, of the validity and interpretation of treaties, of the law of war, of war criminals, of neutrality, and of prize. The relatively small number of "prize" cases suggests a change in the character of maritime war.

While a considerable proportion of the cases are taken from American or British courts, Latin-American, German, Swiss, Italian, Czecho-Slovakian, and Polish courts have made contributions. International lawyers can not but be grateful to the devoted service of the editor of the *Annual Digest* in keeping the series current and of unimpaired quality during the difficult times of war.

QUINCY WRIGHT

Protection against Group Defamation: Present Law and its Extension. By P. Weis. London: British Section of the World Jewish Congress; 1945. Pp. 40.

This study is of social and psychological interest in that it throws light upon the origins and conditions of hostility against racial and cultural minorities. It is however, primarily, of legal interest. It examines the availability of civil and criminal action in modern countries as a defense against the defamation of racial and cultural groups.

F. R. Bienenfeld, in an extensive preface, attributes to attitudes characteristic of primitive peoples the tendency of modern man "to ascribe both his major and his minor disappointments and failures to the influence of his neighbor, whose language, habits and religion differ from his own" (p. 3). The inconsistency of this attitude with civilized religious and political ideals and with peace and order suggest that "the provision of measures designed to counteract the spread of group hatred is at least as much to the interest of nations in whose midst there exist minorities as for these minorities themselves" (p. 4). The relative role of education and of law in eliminating this primitive attitude is then discussed.

The body of the pamphlet is a summary of the legislation and judicial decisions of eighteen countries in respect to civil and criminal actions for group defamation prepared by P. Weis. While the author is primarily interested in anti-semitism, he believes that this attitude can be dealt with effectively only through rules applicable to the members of all minority groups in so far as it can be dealt with by law at all. The emphasis is upon the protection of human rights, not upon the protection of a particular minority.

The law of the countries studied other than the Soviet Union is individualistic. An indefinite group or class can seldom bring an action in its own name, and an individual of such a group or class can seldom win an action under common law systems unless he can show that the group defamation was intended to apply to him personally, or was generally considered to apply to him personally. In civil law systems such actions are frequently possible if definite damages to the individual can be shown. The possibility of criminal proceedings for group defamation are somewhat greater especially under civil law systems. There have been some recent American statutes such as the New Jersey Act of 1935 and the Mass. Act of 1943 (pp. 14, 34) which provide for criminal indictment for group defamation. Such statutes, which have sometimes been held contrary to constitutional guarantees of freedom of speech or press, resemble the Soviet Legislation of the 1920's (p. 16).

The pamphlet suggests various legal reforms but recognizes that they are not likely to be successful unless public opinion is educated to support them and to insist upon their efficient administration. Furthermore, such laws

in democratic countries must be carefully drawn to avoid impairing freedom of speech and press (p. 29-30).

Of the Board of Editors

QUINCY WRIGHT

Trends in European Social Legislation Between the Two World Wars. By Alexander Lorch. New York; Institute of Comparative Law; 1944. Pp. 148. \$2.00.

This monograph forms a part of the preparations underway at the Institute of Comparative Law for the period of social reconstruction after the war; it is preceded by a foreword by Professor Mirkine-Guetzevitch, Director of the Institute. It deals with the vital subject of the development of European social legislation during the last three decades, modelled on the French and German legal systems as representative of the tendency of such modern legislation.

The rise of large scale enterprise has profoundly modified the relationship between employers and employees. These striking changes are reflected in the attempts, made in all industrial countries, to insure labor against the economic insecurities and hazards created by modern industry. In European countries the greatest development took place during the period following the First World War. Among the numerous experiments aiming at the democratization of labor relations, the social reforms made in Germany under the Weimar Republic and the French reforms made under the Popular Front Government receive the author's special attention. On purpose he omits National Socialist and Fascist legislation. "Legal systems which disregard the fundamental principles of a constitutional state don't even deserve the name of law." The national systems are considered separately, preceded by an historical introduction. Only the new features developed during the last decades form the subject of this study, which portrays the structural character of collective bargaining, mediation and arbitration, and workers' representation in the shop.

The five chapters of the book cover a wide field and bring into relief one of the most delicate problems—the reconciliation of individual democratic liberty with collective action. The author's ability to organize this vast volume of material is remarkable. The book can be used with great benefit in our reconstruction period.

HENRY MAYER

New York City

Handbook of International Organizations in the Americas. By Ruth D. Masters. Washington: Carnegie Endowment for International Peace; 1945. Pp. xvi, 453. Index. \$5.00.

In consequence of the war we have had during these last years no new editions of the valuable Handbook of International Organizations which

the League of Nations used to publish. In the volume under review the Carnegie Endowment presents a Handbook of International Organizations in the Americas, i.e. of organizations of two or more governments or of citizens of two or more States, organizations which operate on the international level, which are permanent—although some important wartime organizations which may not be permanent are included—, and which are located in the Americas. Only organizations existing at least formally in 1944 are included. Not included are purely national, governmental or private, organizations, even if their purpose is international; neither are included bodies which have no permanent organization—such as panels for arbitration or conciliation commissions,—nor bipartite cultural, friendly, and social clubs.

The Handbook lists 109 such organizations in the Americas. Whether this great increase is a phenomenon of this war or a symptom of a permanent tendency, the period after the war will show. Organizations located temporarily in the Americas because of the war, like the I.L.O., are not included.

Twenty-seven of these organizations are not merely Inter-American: they comprise 14 world-wide organizations, all of them private; 10 organizations of the United Nations, all governmental; and 3 British-American governmental organizations; among the latter is the highly interesting Anglo-American Caribbean Commission.

Eighty-two of these organizations are restricted to governments or citizens of the Americas; 12 are American-Canadian governmental commissions. The rest are Pan-American. Among those we note first bipartite commissions: seven U. S.-Brazil, three U. S.-Mexico, one Bolivia-Argentina, one Bolivia-Brazil, one Chile-Ecuador. Others may be called sub-regional Pan-American organizations: five Latin-American, all private; three South American, two Caribbean, including the Permanent General Secretariat of the Inter-American Caribbean Union, a real Pan-American subregional organ, like the former Central American agencies. There are finally Pan-American organizations in the full sense: 14 of them private, and 33 official Pan-American agencies.

The Carnegie Endowment has in earlier volumes given us a synopsis of Pan-American Conferences and organs. This task of furnishing reliable and ample information, out of the scattered, insufficiently published, and often not easily accessible Pan-American material has been considerably carried forward with the present volume. On the basis of diligent research, and, where the available materials were not sufficient, by extensive correspondence and personal interviews, a mass of reliable information has been assembled, comprising, as far as possible, the history, purpose, functions, membership, administration, meetings, finances, publications, and work done by each organization, adding sometimes a bibliographical note. The volume is, therefore, of greatest importance and value and the Carnegie Endowment as well as the author deserve our best thanks.

The volume is a reference work, not a treatise. The material is the starting-point for further investigations as to the legal structure of the different types, the legal value of resolutions adopted, the legal connection with Pan-American general and technical conferences, the mutual relations of Pan-American organs, their relation to world-wide organizations, the different intermediate stages between private, semi-official, and official organizations, and many other problems, some of them constituting particularities of the Inter-American set-up. Theoretically we cannot agree with the author's remark, in the Preface, that some of the international organizations are "not under international administration," because supervision of the Bureau is vested in the state of the seat of the organization, for the so-called "directing state" exercises its functions on the basis of the fundamental treaty. Switzerland is, vis-d-vis the Universal Postal Union Bureau in Berne, merely a mandatory, an international organ of the Union, and her activities are of a purely formal character, not interfering with the activity of the Bureau; its director has an independent position, full freedom of action, and full responsibility.

The volume also refrains from a critique of the organizations. The question is not asked, whether codification of international law is really a subject "appropriate for regional action," to quote the United Nations Charter. Also a critique of the value or efficiency is avoided. The set-up as to codification of international law is now so complicated that it blocks any further progress in this field. The Childhood Welfare Institute in Montevideo is greatly hampered by its inadequate financial situation. He who reads the pages on the Inter-American Trade Mark Bureau in Havana could not learn that this agency has never attained any real significance, has done very little business, and is, now that the U. S. has withdrawn from membership in it, probably on its way out.

But these remarks show only the voluntary limitations which the author has adopted and by no means decrease the value of a work of information such as we have not yet had in any language.

Josef L. Kunz

Of the Board of Editors

International Regulation of Fisheries. By A. Larry Leonard. Washington: Carnegie Endowment for International Peace; 1944. Pp. x, 201. Maps. Index. \$2.00.

Among the many problems which are currently pressed as requiring international regulation, sea fisheries are rarely mentioned. This is a strange oversight, for some of the great international controversies of the past have arisen over fishing rights and at the moment there are no less than four such actual or potential disputes in the North Pacific alone. The international regulation of fisheries is a highly important subject, and a discussion of it now, as the world seeks to build a peaceful world order, is indeed timely, for,

as Leonard points out, opportunity of securing agreement on some form of international protection of fisheries will be much greater in the months immediately following the end of the war than at some later date.

After examining the chief fisheries disputes of the past and the present Leonard analyzes the problem of the regulation of fisheries in the post-war world. He concludes that there are four alternatives of control. of these, the extension of the territorial sea, he rejects as unsound. of the wide varieties of sea life no uniform zone of territorial waters for this Moreover, a mere extension of the maritime belt would purpose is possible. not necessarily result in conservation measures, but would, in some cases, give monopoly rights to the territorial state. Furthermore, some types of sea products, such as the whale and the fur seal, migrate extensively, and would thus be under the jurisdiction of several states at different times. The second alternative, that of granting maritime states special rights of protective jurisdiction beyond the three-mile belt, is open to much the same objections as the first. The third alternative is the conclusion of bilateral or multilateral agreements for regional fisheries. Such agreements in the past have generally been made only after a particular fishery has been seriously depleted or after long diplomatic controversy and arbitration. serious weakness of this method is that non-signatory states are not bound by the agreements and their nationals are thus free to ignore the regulations.

Since the first three methods, whether taken singly or altogether, are inadequate, Leonard proposes the establishment of an international fisheries office. In addition to a Central Office and Secretariat, he suggests a Central Scientific Board to carry on research on the important fisheries of the world, a Central Fisheries Commission for the arbitration of disputes, Regional Fishery Boards to establish regulations for the conservation of regional fisheries, Regional Scientific Boards, and Specialized Fishery Committees with the function of issuing regulations for the protection of particular species of sea life.

This is an excellent study and the proposals in it have great merit. It is hoped that Leonard's suggestions will receive serious consideration.

AMRY VANDENBOSCH

University of Kentucky

Boundary-Making. By S. B. Jones. Washington: Carnegie Endowment for International Peace; 1945. Pp. xvi, 268. Documents. Maps. Index. \$3.00.

At times it is suggested that certain aspects of the life of the state provide opportunity for, and also demand for their due appreciation and treatment, recourse to a number of distinct scientific disciplines as the latter are ordinarily defined and organized. No better illustration of this sort of thing could probably be found than *Boundary-Making* by Dr. Stephen B. Jones. Dealing with the problem of his choice the author is compelled to draw upon

geography, sociology, economics, law—even international law—, and administration for an adequate interpretation. Only politics and war are conspicuous by their absence from a volume on what is ordinarily regarded as a crucial problem in these fields; there is a slight note of unreal scientific purity and remoteness about this cool and calm treatment of a subject commonly full of heat and hysteria.

Nor is it easy to find fault with the author's handling of the specialties upon which he draws—as far as this reviewer can judge. His economics seem sound, and his law, and especially his administration. Whatever the geographers may feel about it the volume seems, especially in its culmination, to stand out most clearly as a study of interstate administration. The fact that most boundary commissions are temporary in duration and bipartite in membership does not detract from their importance as constituting a whole branch of international administration in themselves, including such matters as personnel, finances, procedure, and all other typical aspects of that activity. In few writings with which the reviewer is acquainted are these subjects better handled, moreover.

The volume, intensely technical study though it is in the main, will also interest the general student and even the general reader because of the subject matters with which it deals, the very readable style in which it is written and perhaps also the skillful diagrams used to illustrate the text. It is to be feared, however, that the volume makes demands upon the intellectual candor and integrity of the reader which are not likely to be easily met in a season which has witnessed the unqualifiable nonsense and viciousness of the recent boundary making in Northeastern Europe.

PITMAN B. POTTER

Managing Editor

UNRRA—Organization, Aims, Progress. Washington: UNRRA, 1945. Pp. ii, 34.

This small pamphlet presents in compact form the main data concerning the establishment, internal organization, financing, scope of functions, and working methods of UNRRA. Following a brief description of the extraordinary relief and rehabilitation problem existing in areas liberated from the Axis Powers, it outlines the steps which led to the signing, on November 9, 1943, of the Agreement creating this international service agency—the first of its kind. Forty-four United and Associated Nations (Albania and Denmark have since joined the original signers) therein agreed to organize their resources for collective aid in solving this relief and rehabilitation program. As of April 30, 1945, the member governments of UNRRA had authorized or initiated action for authorizing general contributions to UNRRA totaling \$1,867,932,400. In his address to the Third Session of the Council of UNRRA in London, Governor Herbert H. Lehman asked for an additional sum of \$500,000,000 to meet increased relief requirements next year which

are anticipated as a result of the end of the war with Japan. The pamphlet outlines the principal fields of UNRRA operations in some detail and contains several charts showing the manner in which relief and rehabilitation requirements are assessed and contributions from member governments are obtained. It describes the action taken by the First and Second Sessions of the Council of UNRRA, as well as the actual field operations undertaken by UNRRA in Europe. In addition to the Headquarters Office in Washington, D. C., UNRRA now maintains a European Regional Office in London, a Southwest Pacific Area Office at Sydney, Australia, and a China Office at Chungking, each serving UNRRA operations in its own area. A Middle East Office in Cairo administers the refugee camps maintained by UNRRA in that region. At the end of the pamphlet may be found a helpful chart showing the interrelationship of the various Committees of the Council of UNRRA.

Carnegie Endowment for International Peace

RUTH D. MASTERS

Functions and Powers of the Foreign Consulate—A Study in Medieval Legal History. By J. Irizarry Y Puente, New York: New York University School of Law; 1944. Pp. 44.

The development of international commerce and social relations gives to consuls a rôle of ever increasing importance. As a consequence the origins of the institution deserve widespread general interest. Mr. Puente has presented us with a readable and well balanced study of consular functions during the medieval period. Especially interesting is the discussion of the criminal jurisdiction of consuls, often exercised during this early period, and the denial of such authority in consequence of the "advent and triumph of the new juridical doctrine of the territoriality of the law."

Another contribution of this brief study is the account of the course adopted to overcome the restrictions on commerce resulting from the then existing system of special grants and privileges given by one community to the merchants of the others through "recourse to a new legal device, known in modern international law as most-favored-nation treatment."

In his conclusion the writer indicates that a distinctive feature of consular practice during this period "was its uniformity throughout the world." Mr. Puente considers that "there were three reasons for this. One was the adoption of the Consulado del Mar in the 13th century as the maritime law of nations, the provisions of which consuls were required to observe as to those questions over which they had jurisdiction. The other was the acceptance by governments of the consular practices which were in vogue elsewhere. The last one was the recourse frequently had to most-favored-nation treatment, which gave uniformity to the practice within the territory of the admitting sovereign."

Of the Board of Editors .

ELLERY C. STOWELL

Woodrow Wilson and the Great Betrayal. By Thomas A. Bailey. New York: Macmillan; 1945. Pp. xii, 429. Cartoons. Maps. Index. \$3.50.

At last here is a book on the League of Nations contest between President Wilson and the Senate in which the author gives the pertinent facts in their objective setting and bases his conclusions upon what in law would be regarded as the best evidence, namely, the authentic record. He discards the views of some other writers that the defeat of the League was the result of the malign activities of a few personal and political enemies of the President. He does not reiterate the outworn myth that ratification failed because of the two-thirds rule for treaty approval in the Senate. He shows that the treaty without reservations received an adverse vote of almost two-thirds against ratification and that the votes to defeat it with reservations came, in accordance with President Wilson's explicit directions, from Senators of his own party, many of whom had they been left alone would have voted the other way. The author therefore properly concludes that "In the final analysis it was not the two-thirds rule, or the 'irreconcilables' or Lodge, or the 'strong' or 'mild reservationists,' but Wilson and his docile following who delivered the fatal stab" (p. 277).

The recent action of the Senate in approving the United Nations Charter without reservations by a vote of 89-2 presents a happy contrast to the long and bitter struggle of 1919-20. The present Administration profited by President Wilson's mistake and made the United Nations Charter by and with the advice and consent of the Senate in accordance with the Constitution. Had he followed the same course, the League of Nations Covenant would have been approved by a similar overwhelming vote of 81-13. After examining the effect of each reservation upon the Covenant, the author finds them "largely inconsequential" and he disagrees with President Wilson's charge that they completely killed the treaty. He shows, furthermore, that they were acceptable to our principal associates in establishing the League.

The reviewer never believed that the failure of the United States to enter the League was due to "isolationism." The reservations voted by the Senate, all by substantial majorities, dealt primarily with essentially internal problems of American constitutional law. For example, on the vital question of the use of American armed forces in support of the League, the Senate provided that such use would be subject to the authorization of Congress, but President Wilson was particularly opposed to this reservation because he said it stabbed at the "heart" of the Covenant. The framers of the United Nations Charter have accepted the Senate's point of view by specifically providing that there shall be special agreements on this subject to be ratified by the signatory states in accordance with their respective constitutional processes. Moreover, unlike in the Senate debate on the League, it was conceded in the debate on the Charter that it would have to be implemented

by further Congressional action in order to make effective the representation and participation of the United States on a democratic constitutional basis. Opposition had accordingly to be centered upon the coöperation of this country with the United Nations in international arrangements to maintain peace and security and such opposition was conspicuous by its absence.

Professor Bailey's book contains some information from private sources not heretofore published which adds to the interest of his narrative and the soundness of his conclusions.

GEORGE A. FINCH

Editor-in-Chief

Conscience and Society: A Study of the Psychological Prerequisites of Law and Order. By Ranyard West. New York: Emerson Books; 1945. Pp. vi, 261. Index. \$3.00.

This is an American edition of a book published in 1942 in England under the same title. The author, a psychoanalyst, attempts to clarify certain problems of political and legal theory in the light of current psychology. The findings of modern psychoanalysis, he maintains, support the generalization that there is a primary social instinct in man which serves man's need of security in society, and a primary aggressive instinct which serves each man's interest in himself alone. He takes issue sharply with Freud's one-sided emphasis upon aggressiveness as a primary drive and criticizes Freud's unscientific willingness to generalize about normal men from his experience with neurotics. "Most men," he says, "behave as if at most times their social instinct dominated over their self-assertive instinct"; thus modern psychology seems to confirm Aristotle's famous dictum. The prime function of law is, then, to support men's social instinct against the potential aggressiveness of all men. Law may thus be interpreted as an extension of self-Accepting the familiar Hobbes-Austin thesis that law without certain enforcement is no law, West regards international law as a "great illusion" unfortunately fostered by international lawyers. Nations can only escape the Hobbesian state of nature where they now dwell through the imposition of an international law maintained by force; not by the gradual development of international law as one aspect of a developing international West's discussion of three ways in which world law might be instituted is quite inadequate, but his discussion of the psychology of loyalty and its transferability is penetrating and suggestive. Political and legal theorists can not afford to ignore this book. They will not always agree with West's interpretations in their own fields, but they will find his exposition of psychological principles lucid and instructive, and his exploration of the social implications of those principles genuinely provocative.

John D. Lewis

The Future of Japan. By William C. Johnstone. New York: Oxford University Press; 1945. Pp. ix, 162. Index. \$2.00.

Americans will have the problem of Japan—which in the past they have rather contemptuously waved aside—upon their hands for a long time to come. The defeat of Japan means not the end but the beginning of serious study of Far Eastern problems for the average American; and for this purpose the reviewer knows of no more useful handbook than Dr. Johnstone's The Future of Japan. It is a small book, but compact; so much could have been packed into this space only by one with the thorough knowledge acquired through long and careful study. It is informative and constructive; it provides some answers to most of the questions now being asked; it arouses interest for further study.

The book is organized into twelve short chapters, most of them with a numbered set of proposals summarized at the end. The first six or seven deal with the treatment of defeated Japan, and, while it is impossible to survey them all here, the most important recommends that occupation should destroy militarism and control by a few families (*Laibatsu*) and should encourage liberalism even by support of revolution should that improbable development occur.

The remaining chapters inquire as to how Japan can be made over into a peaceful and trustworthy nation. The author regards this as a difficult job. The Emperor, he thinks, must go, though gradually; the United Nations should "use" him to document defeat but should in no way support the institution. This does not sound easy and further inquiry into the possibility of "using" the Emperor, and of converting Japan gradually into a democratically controlled constitutional monarchy would have been helpful. The abrupt termination of so firmly established an institution might produce undesirable reactions. Dr. Johnstone calls for a new constitution, in which power is derived from the people, and for an executive responsible to the elected representatives of the people. The chief problem is to improve the economic situation of the people, and to release them from the hold of the Laibatsu, in both economic and social fields. He has a number of suggestions to this end.

Finally, he warns us that the Japanese—at any rate, the militaristic leaders—consider the United States as their number one enemy. It is a warning which Americans should take seriously. The United Nations have a reputation to retrieve, and must undertake it carefully, avoiding charges of imperialism and of racial superiority.

The volume appears under the auspices of the American Council, Institute of Pacific Relations. It is an excellent book, and is recommended highly to those who wish a survey of the Japanese problem.

CLYDE EAGLETON

NOTES

International Monetary Reconstruction. By Michael A. Heilperin. New York and Washington: American Enterprise Association; 1945. Pp. 112. Appendix. Index. 50 cents. Bretton Woods: Clues to a Monetary Mystery. By Carlyle Morgan. Boston: World Peace Foundation; 1945. Pp. viii, 143. 50 cents. These two brief appraisals of the Bretton Woods Agreements are timely contributions to a growing stream of literature designed to promote a popular understanding of the problems which confront the United States as it assumes its postwar responsibilities in a new world order. The proposals for an International Monetary Fund and an International Bank of Reconstruction and Development are viewed as integral elements in a broad pattern of international collaboration. Neither author considers them as perfect instruments but rather as constructive beginnings in the development of a workable international economic and financial system.

That the countries of the world must develop new techniques in order to carry on business and prosper is taken for granted in each case. The conditions for the establishment of the nineteenth century gold standard no longer exist. The answer today is not to be found in a gold, silver, or commodity standard but in an *international* standard. The Monetary Fund is viewed as a necessary compromise but it is a compromise based on a careful consideration of realities and, therefore, one that promises a higher degree of workability than the *ad hoc* devices which characterized our

efforts after the first world war.

Both authors attempt to cut a pathway for their readers through the technical phraseology which in July 1944 came forth as the work of representatives of 44 countries. In their appraisals of the main provisions, in their verdict on the bankers' and other criticisms, and in their expressed convictions that financial and commercial problems must be treated as interdependent parts of any effective system of international cooperation, the authors are in full agreement. Each appends a comprehensive reference list in order to encourage further study.

In method and scope of treatment, however, the authors follow different courses. Mr. Morgan, an editorial writer for the *Christian Science Monitor*, addresses himself entirely to the layman. Beginning with "Bretton Woods in a Taxi," he outlines his story in simple terms. The average citizen is told why the good or ill effects of world currency systems reach into every field, shop and office. Bretton Woods points in the right direction if we are to equip ourselves "with the great overriding question of security, and with the crucial questions of money and exchange, international investment, trade,

civil aviation, labor and agriculture."

Professor Heilperin, who attended the Bretton Woods Conference as technical adviser to the Polish delegation, analyzes each important provision of the Fund and Bank proposals. The student of international finance as well as the layman with a reasonable degree of professional or business knowledge of international economic affairs will find this analysis exceedingly helpful. The Agreements are examined against the now familiar background of the uncoördinated policies of the nineteen twenties. An explanation of the economic significance of the Fund is followed by a similar appraisal of the Bank. After an objective review of the various criticisms directed against the proposals at home and abroad the author concludes that Bretton Woods represents "a first step along the road to an integrated world economy." Even though the United States will not need

the assistance of either the Fund or the Bank it will need "the sort of world these institutions may help to bring about."

Both authors agree that some of the criticisms advanced by leading bankers against the Bretton Woods proposals are not without force. These point, however, more to the necessity of good management, a factor especially emphasized by Heilperin, than to justification for rejecting the

program.

Despite the large volume of literature on Bretton Woods which has already appeared each of these books fills a definite need. Neither volume, however, will serve the purposes of those who are interested in the legal and administrative provisions of the Agreements. Morgan's "clues" are admittedly limited to the small area of the layman's understanding while Heilperin warns the reader throughout that his task is primarily that of appraising the *economic* significance of the proposed Fund and Bank. Both authors speak with sound knowledge and training.

Amos E. Taylor

United States Department of Commerce

Second Annual Report Submitted to the Governments of the American Republics. July 15, 1948-October 1944. By the Emergency Advisory Committee for Political Defense. Washington: Pan American Union; 1944 (English edition). Pp. x, 154. Recommendations and Reports. Official Documents 1942-1944. By the Inter-American Juridical Committee. Rio de Janeiro: Imprensa Nacional; 1945. Pp. 161. These two collections of documents furnish valuable background material for the study of Inter-American problems during the later war years.

The first volume is chiefly concerned with the problems of preserving American unity and especially with the effective political defense of the Continent, as well as with the prosecution of the war. So condensed a factual treatise cannot be adequately reviewed in a brief space, but an indication of the contents may be obtained from chapter titles which are as

follows:

I. American Solidarity and Totalitarian Aggression.

II. Consultation and Exchange of Information Prior to the Recognition of New Governments Established by Force during the Emergency.

III. The Second Phase of the Committee's Activities. Individualization and Implementation of the Recommendations Transmitted to

the American Republics.

IV. General Appraisal of the Organization and Procedures of the Committee for Political Defense.

V. General Appraisal of the Political Defense Structure of the Continent.

An appendix of three sections contains:

I. Recommendations and Communications Submitted to the Governments of the American Republics.

II. Documents Relating to the Consultative Visits.

III. Documents Relating to the Committee's Organization.

A list of members of the National Committee for Political Defense may be found on pages 143-154.

The second volume contains the report of the old Inter-American Neu-

trality Committee (created at the First Meeting of Foreign Ministers, held in Panama in 1939). The name of this committee, however, was changed to the Inter-American Juridical Committee at the Third Meeting of Foreign Ministers, held at Rio de Janeiro in 1942. As the legal successor to the former committee the new group, consisting of seven members, representing all the American republics rather than individual countries, has sought "to give expression to Inter-American tradition and to solve new problems by the application of Inter-American principles and ideals." The following classifications of functions were assigned to the committee by the governing board of the Pan American Union: (1) juridical problems arising out of the present war, (2) postwar problems, (3) the development and coordination of the work of the codification of international law, and (4) the coordination of the resolutions of consultative meetings of foreign ministers.

The documents printed in this volume, including the Dumbarton Oaks proposals, are listed in the chronological order of their adoption during the years 1942–1943. Each document is preceded by a brief introductory statement. On page 7 is found a list of projects completed by the Inter-American Juridical Committee. The Table of Contents is doubtless ade-

quate, but an index would have been helpful.

A. CURTIS WILGUS

The George Washington University

The Atlantic Charter—New Worlds for Old. By Julius Stone. Sydney: Current Book Distributors; 1945. Pp. 96. The introduction of this small volume states that peace, like charity, begins at home, and that peace at home requires participation of all in the democratic determination of political, economic and social policies, the reduction of inequalities, and freedom of worship, speech, and assembly. Whether the Atlantic Charter means platitudes or peace, in view of its problems and ambiguities, depends on the Big Three.

The remaining three chapters are lifted unrevised from a 1943 edition of a larger volume under the same title as the one under review. The analysis of the Charter concludes that the document envisions not a federal union, grand alliance or concert of the powers, but rather a reformed League regarding which little is said on the important problems of internal social organization. In a final chapter on the Charter and the Pacific, the author concludes that the principles of no aggrandizement, emancipation of subject people ready for such a step, the restoration of self-government, access to raw materials and trade, and economic collaboration apply to the Far East. The wishes of the people regarding their future, however, can be of little help in certain areas of mixed and politically undeveloped populations, and the Charter is silent regarding the areas not ready for emancipation and the form of the international organization. With events moving as rapidly as they have, it is regrettable that the publication of this volume did not mean a revision of the original capable analysis. A study of the Atlantic Charter without any reference to the subsequent conferences and the Charter of the United Nations seems strangely out of date.

WILBUR W. WHITE

Western Reserve University

A New Era. The Philadelphia Conference and the Future of the I.L.O. Montreal: I.L.O.; 1944. Pp. vii, 146. \$1.00. This publication contains

abstracts from speeches delivered at the 26th Session of the International Labor Conference on the two most important subjects on its agenda: "Future policy, program and status of the International Labor Organization" and "Recommendations to the United Nations for present and post-war social policy." It also reproduces, in part, the delegates' observations on the "Director's Report."

The debate on these items reviewed the substantial achievements of the I.L.O. in the course of the past 25 years and clearly indicated a general consensus of opinion that the I.L.O. should be continued after the war. The delegates, of course, were not unaware of some of the imperfections of the existing agency and they frankly expressed their desires regarding such matters as closer cooperation between the Office and member governments, regional activities, and so on. However, little was done at the Conference itself to assure to the I.L.O. not merely a place of work in the field of post-war international cooperation but also, and above all else, that degree of autonomy without which it will be seriously handicapped in the performance of the larger tasks imposed upon it in recent years by the member governments. It will be recalled that in 1939 when the Bruce Committee submitted to the League of Nations its Report on "The Development of International Cooperation in Economic and Social Affairs" the then Director of the I.L.O., Mr. John G. Winant, in a letter to the Secretary General of the League dated November 3, 1939, insisted that if the Assembly should approve that Report it should be made "quite clear . . . that the autonomy and competence of the I.L.O. were not affected by the establishment of the new Committee" for Economic and Social Questions. The Assembly, in approving the creation of that Committee, the forerunner of the United Nations Economic and Social Council, passed accordingly a Resolution on December 14, 1939, in which it confirmed to the I.L.O. "its present autonomy and competence."

While the absence of the U.S.S.R. from the I.L.O. may make itself felt in the solution that will eventually emerge, it is clear that unless the I.L.O. is granted more rather than less autonomy than it has enjoyed, de jure and de facto, since its inception, it will not be in a position to act "as the social conscience of mankind." On the other hand it is equally clear that an undue fragmentation of the international field is not desirable and that the work of the I.L.O. and of other specialized agencies must be effectively coordinated by a central agency. According to the will of the United Nations as expressed in the San Francisco Charter the Economic and Social Council is to be that central agency. Friends of the I.L.O. must look forward with confidence to the impending negotiations between the I.L.O. and the United Nations Interim Commission. They will hope that considerations of prestige will not occupy a larger place than they should and that the will to exist in the best obtainable conditions will prevail over all other considerations of a secondary nature.

LEO GROSS

Fletcher School of Law and Diplomacy

The Earth and the State. By Derwent Whittlesey. New York: Holt; 1944 (corrected reprint). Pp. xviii, 618. Glossary. Maps. Index. \$3.75. This text book on political geography is a revision but not a rewrite of the 1939 printing. It is a scholarly work so packed with facts and philosophy that the reading of it requires concentrated attention. The author points out that there is no consensus either in the approach or content of political geography but to him, "the differentiation of political phenomena from place to place over the earth is the essence." Because he recognizes that "the interplay of government and nature is dynamic and subject to ceaseless change" he has directed his writing almost entirely to those areas where the states and legal codes are "firmly established and their character clear."

The first 85 pages are essentially a background of general factors, with emphasis on the space relationships, the resources, and the transportation

facilities of states and empires.

The treatment of areal geopolitical factors is not encyclopedic country by country but by selected type areas which include Britain (and her Empire), France, Germany, East Central Europe, Mediterranean countries, Africa,

Latin America and North America.

Emerging from the areal discussion, the book concludes with a chapter on "Earmarks of Political Geography," in which the persistence of the areal patterns of political units, whether or not they now harmonize with earth conditions and peopling, points to the necessity for understanding not only the present but the "heritage of environmental conditions long vanished."

The numerous carefully selected and excellent maps are most helpful to the reader. Some such volume is indispensable to any student of international

relations.

JOHN W. FREY

Washington

China Fights On. By Pan Chao-Ying (Stephen C. Y. Pan). New York: Fleming H. Revell; 1945. Pp. 188. Photographs. Index. \$2.50. author gives in compact form a chronological account of Japan's aggression against China, including some interplay of European and American countermoves which were ineffective, all of which led to Japan's attacks on the Western Powers in the Pacific in December, 1941. There are copious references to and quotations from official documents. Attention is called to the Chinese warnings, unheeded at the time, that the attack upon Manchuria in 1931 was but the beginning of Japan's plan of world conquest. has paid dearly for its indifference to China's plight during the decade 1931-1941. The unconditional surrender of Japan since the book was published makes much of its contents of historical interest only. China has, by her great sacrifices and material and moral contributions to the glorious victory of the United Nations, won for herself the position of a Great Power in the world's counsels. All vestiges of former servitudes in derogation of her sovereignty and independence have disappeared. She has now achieved one of the purposes of the National Revolution namely to win for China freedom and equality and the abolition of unequal treaties. Still lying ahead of her, however, are the tremendous tasks of internal reconstruction for which the Revolution was also begun. To reach this goal is now the real significance of the title China Fights On. To carry on this fight China deserves and will receive the assistance of all who are concerned with civilized progress. GEORGE A. FINCH

Editor-in-Chief

The Big Three. The United States, Britain, Russia. By David J. Dallin. New Haven: Yale University Press; 1945. Pp. ix, 292. Maps. Index. \$2.75. Some recent surveys of the relations of the greatest powers with each other, including one made by this reviewer, have been guardedly optimistic about the future of Soviet-American relations. Not so Mr. Dallin's.

He is frankly pessimistic, but he concludes: "Today it is still possible for the Soviet Union to retreat in Europe to the limits of national Russia—to the natural borders of the three main Russian nationalities—and to reestablish the real independence of her neighbors. Tomorrow may be too late." He believes it is for the Russians, not ourselves, to decide whether Soviet-American relations will be good or bad. It will be a great comfort to many Americans to read that it is the Russians who will have to reform, that a

clash, if it comes, will be their responsibility.

If the prognosis and diagnosis is less precise in suggesting what the United States will do or ought to do to promote amicable relations, it is perhaps because Mr. Dallin is primarily a writer on Soviet affairs. Three early chapters are devoted to the foreign policies of the Western powers, but the major emphasis is placed on Soviet policy. World revolution, by fair means or foul, he believes still to be the goal of Soviet leaders. The new emphasis on "intensive" revolution is merely a change in method and explains Soviet concentration on expanding its influence in border areas. He does not consider a possible contrary interpretation, that the contemporary interest in expanding influence in neighboring countries has made it necessary to use the symbols of world revolution in new ways.

This is Mr. Dallin's fourth volume on Soviet affairs in four years. It is meant for the general reader, and the professional student of international affairs will find it less useful than his earlier work which was extensively

documented with quotations from Russian sources.

WILLIAM T. R. FOX

Institute of International Studies Yale University

Color and Democracy: Colonies and Peacs. By W. E. Burghardt DuBois. New York: Harcourt, Brace; 1945. Pp. vii, 143. \$2.00. The hideous cruelties, abominable humiliations, and incredible injustices suffered by the colored race have created a bitterness that precludes an objective and fair analysis of the whole colonial problem. The author has supplied interesting and valuable data on the subject but he has not provided a dispassionate and realistic solution. In reality his thesis amounts virtually to a general denunciation of the injustices and stupidities of nations over the centuries.

Russia alone emerges with credit.

While recognizing the sufferings and humiliations still being endured by the negroes in many parts of the world, including the United States, we may conclude from this exposition of the problem that the only sound answer is to be found, as in all other social problems, in the progressive education of mankind everywhere out of barbarism, degradation, and oppression into decent economic and social conditions and eventual self-government. The author seems to reveal a lack of realism in considering the status of the many African tribes so obviously unprepared for united political action, self-government, and independence. He does not credit the colonial powers with sincerity in acknowledging their responsibilities as trustees for the education of backward peoples for full freedom and international obligations. His book, however, when read with respect and sympathetic consideration, gives much food for painful reflection and honest resolve to join in the task of helping the colored race to secure justice both at home and abroad.

P. M. Brown

Memoirs of An Ex-Diplomat. By F. M. Huntington Wilson. Boston: Bruce Humphries; 1945. Pp. 373. Index. \$3.00. Diplomatic memoirs are often of most interest and value if published within a reasonably short time after the events discussed take place. The present volume covers the long and active life of the author from earliest childhood to the present time. His diplomatic activities, however, were confined to the relatively brief period from 1898 to 1912. During this time the author served for seven years as Secretary of Embassy at Tokyo and as a high official of the Department of State. He was brought back from Japan in 1906 to be Third Assistant Secretary of State, with duties primarily relating to the Protocol Division and the Office of Consular Affairs.

When Mr. Wilson returned to the Department, only three officers serving in Washington (Mr. Alvey Adee, Second Assistant Secretary of State, Mr. Charles Denby, a former Consul in China, and Mr. Wilson) had had any Foreign Service experience. His first aim in the Department was to create four geographical divisions to be manned by officers brought in from the areas concerned. He found the usual bureaucratic resistance to change, but with the enthusiasm of a young man of thirty years of age, he continued to press his point until he was permitted to organize the Division of Far Eastern Affairs as an experiment. He brought into the Department Mr. William Phillips, Second Secretary at Peking, and Percival Heintzleman, a Consul in China, to form the Division. A short time later he succeeded in obtaining Secretary Root's consent to the creation of the three other geographical divisions.

Mr. Wilson's most active career came during the Taft Administration, when he served as Under Secretary of State under Mr. Knox. His memoirs seek to explain and to support the foreign policy known as "dollar diplomacy." He was a genuine supporter of the belief that American dollars were an important civilizing influence in the world.

were an important civilizing influence in the world.

The author was requested to remain in office by Secretary Bryan following the advent of the Wilson Administration in 1913. He soon found it impossible, however, to continue under the policies adopted by this Administration. His resignation was promptly submitted when President Wilson denounced the policy of loans to China on which Mr. Wilson had been working arduously for several years.

The remaining years of the author's life were spent largely in travel and writing. He will probably be best remembered for the reorganization of the Department of State which he effectively put through in 1906.

GEORGE V. ALLEN

Department of State

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UNION OF AMERICAN REPUBLICS

RECOMMENDATION ON THE REORGANIZATION OF THE AGENCIES ENGAGED IN THE CODIFICATION OF INTERNATIONAL LAW*

October 17, 1944

Considering:

Y

- 1. That by Resolution XXVI of the Meeting of Foreign Ministers at Rio de Janeiro the Inter-American Juridical Committee was entrusted with the duty of developing and coördinating the work of codifying international law;
- 2. That the Juridical Committee, in pursuing its studies in connection with the coordination of the work of the codification of public international law, finds that there are numerous committees engaged in the work of codification and that the organization of these committees is not conducive to efficient work and that the functions of the several committees overlap and duplicate;
- 3. That the Juridical Committee is convinced that the work of codification can only be successfully prosecuted if a central organization of a permanent character is established, which can devote its whole time to the work of codification and bring unity into the activities of the various agencies engaged in the work;
- 4. That the importance of the work of codification requires that more rapid progress must be made than has hitherto been possible by the instrumentalities and methods provided for in recent conferences and consultative meetings;
- 5. That the procedures of arbitration and of judicial settlement are both in large part dependent upon the clarification of existing rules of international law and the development of new rules more in accord with the needs of the American States;

THE INTER-AMERICAN JURIDICAL COMMITTEE, acting in pursuance of the competence conferred upon it by the Meeting of Foreign Ministers at Rio de Janeiro, makes the following recommendation with respect to the cordination and reorganization of the work of codifying international law:

- I. The principal work of codification should be entrusted to a small committee of technical experts, herein described as the Inter-American Codification Committee, which could act as a central agency for the coördination of the work of the various public and private bodies directly or indirectly engaged in the work of codification.
- II. The Inter-American Codification Committee referred to in Article I might be the existing Committee of Experts for the Codification of International Law, reorganized in such a manner as to be able to undertake the new functions entrusted to it; or it might be the existing Inter-American Juridical

^{*} Text as issued by the Pan-American Union.

Committee with an enlarged technical staff; or it might be a new c distinct from the two existing ones above mentioned.

- III. The specific functions of the Inter-American Codification C referred to in Article I should be:
- a. To act as an organ of communication with the American Gov with the Juridical Division of the Pan American Union, with varic agencies of codification which the American Governments hav established, and with private groups engaged in the work of codif
 - b. To carry on research work in the field of codification;
- c. To prepare draft projects for the consideration of the Ameri ernments and for discussion by other agencies of codification, and t revised drafts on the basis of the replies and projects received;
- d. To recommend to the American Governments that the Interconference of American Jurists meet to take action upon drafts be the Codification Committee to be ready for final adoption.
- IV. The existing International Conference of American Jurists of plenipotentiary delegates, experts in matters of international labe continued in its present form and with its present competes members of the Inter-American Codification Committee should be members of the delegations of the countries appointing them, with to speak and to vote enjoyed by other members of the respective de The Conference should meet at the call of the Governing Board of American Union, upon recommendation of the Inter-American Committee; and the conventions and other instruments approved a by it should be forwarded to the Pan American Union to be trans the American Governments for appropriate action.
- V. The National Committees may be continued, having as the the initiation of studies in the field of international law and the sub projects of codification to the Codification Committee.
- VI. The Permanent Committee of Rio de Janeiro on Public tional Law might act as a consultative body during the terms of i members.

RIO DE JANEIRO, October 17, 1944.

- (S) Francisco Campos
- (8) CHARLES G. FENWIG
- (S) F. NIETO DEL RÍO
- (8) A. Gómez Robledo

Report to Accompany the Recommendation on the Codification International Law

By resolution XXVI of the Meeting of Foreign Ministers held Janeiro in 1942, the Inter-American Juridical Committee was a one of its objects "to develop and coördinate the work of codifyin tional law, without prejudice to the duties entrusted to other organ In pursuance of this object the Committee has examined all phy work of codification, limiting itself, however, to the codification of public international law. The Committee has come to the conclusion that before the work can be efficiently and systematically carried out it will be necessary to coordinate the numerous agencies created from time to time by the American Governments to undertake the work of codification. For this reason the Committee has limited its first recommendation to the reorganization of machinery of codification looking to the more effective prosecution of the work. No attempt has been made for the present to offer specific topics of international law as ripe for codification or to suggest the practical methods by which the actual work of codification might be carried out. It is the intention of the Committee to present separate recommendations upon each of these topics at a later date.

The importance of the work of codifying international law was recognized by the American Governments as early as the Second International Conference of American States, held at Mexico City in 1901-1902, when a Convention for the Formation of Codes on Public and Private International Law was adopted. The Convention made provision for the appointment of a committee of five American and two European jurists charged with the drafting of codes of public and private international law "to govern the relations between the American nations." The committee, however, was never actually constituted, due to the failure of a large number of States to ratify the convention.

More successful was the attempt of the Third International Conference of American States held at Rio de Janeiro in 1906. This time the work of codification was assigned to an International Commission of Jurists, to be composed of one representative from each of the signatory States. The Commission was instructed to draft codes of both private and public international law and to submit them to the Fourth International Conference of American States. Due, however, to the delay of the governments in ratifying the convention, the International Commission was not convened until 1912, when it appointed a number of committees to undertake the preparatory work and arranged for a second meeting of the Commission in 1914. Because of the European war this meeting failed to take place.

The Fifth International Conference of American States, held at Santiago in 1923, revived the International Commission of Jurists, changing its membership from one delegate to two for each State, and providing that its resolutions should be submitted to the Sixth International Conference. The Commission met at Rio de Janeiro in 1927. It had before it a series of projects of conventions on public and private international law prepared by the American Institute of International Law, as well as reports from some of its six committees. Twelve projects of conventions were adopted for presentation to the coming Conference of American States. Ten of these projects covered the following topics of international law; bases of international law; states, their existence, equality, and recognition; status of foreigners;

treaties; diplomats; consuls; maritime neutrality; asylum; obligations of states in the event of civil strife; peaceful solution of international conflicts.

With the aid of the preliminary work of the International Commission the Habana Conference adopted seven conventions relating to the following topics: Status of Aliens, Treaties, Diplomatic Officers, Consular Agents, Maritime Neutrality, Asylum, and Duties and Rights of States in the Event of Civil Strife. A marked impulse was thus given to the work of codification, and the Conference felt encouraged to make provision for additional agencies of codification in the form of three Permanent Committees, one in Rio de Janeiro on public international law, another in Montevideo on private international law, and a third in Habana on comparative legislation and uniformity of legislation. Provision was also made for the creation, whenever thought advisable, of a commission of jurists to undertake the drafting of a project of uniform civil legislation for the American nations.

At the Seventh International Conference of American States, held at Montevideo in 1933, a resolution on Methods of Codification of International Law was adopted, providing for the continuation of the Commission of American Jurists, which had remained inactive since its meeting in Rio de Janeiro in 1927. At the same time a Committee of Experts, seven in number, was created to serve as a sub-committee of the Commission of Jurists and to do the preparatory work for the Commission. Provision was also made for the creation of National Commissions to undertake doctrinal studies of international law. The need of a general secretariat for the administration of the work of codification was recognized, and the Juridical Section of the Pan American Union was set up for that purpose.

Three years later, at the Conference for the Maintenance of Peace at Buenos Aires, a further effort was made to promote the work of codification by coordinating the resolutions of the Habana and Montevideo conferences. The three Permanent Committees created by the Habana conference were reëstablished and called upon to assist the Committee of Experts in the preparatory work of codification. In turn the National Committees were to cooperate with the Permanent Committees by submitting their projects to them.

In addition to the effort of the Conference at Buenos Aires in 1936 to coordinate the agencies of codification established at the Habana and Montevideo Conferences, the Eighth International Conference of American States, held at Lima in 1938, made a new attempt at coordination by classifying the successive stages of the work and by establishing the precise duties which each of the agencies engaged in the work was to perform. The studies of the National Committees were to be submitted in the form of preliminary drafts to the Permanent Committees, now reorganized by the addition of six nonnational members. The Permanent Committees in turn were to submit their drafts to the Committee of Experts, now enlarged from seven to nine members. The drafts prepared by the Committee of Experts on the basis of

the material submitted to it were to be forwarded to the Pan American Union and from the Union to the American Governments. The last stage of the work was to be carried out by the International Conference of American Jurists, successor to the former International Commission of American Jurists. Instead of having the delegates to a regular international conference pass upon the drafts prepared by a technical body, as had happened at Habana in 1928, the Lima Conference provided that the Conference of Jurists should be composed of delegates with plenipotentiary powers, and that the function of the Conference would be "the revision, coördination, approval, modification or rejection of the drafts prepared by the Committee of Experts." Nothing would remain to be done then, except to submit the instruments signed by the Conference of Jurists to the Pan American Union, which would submit certified copies of them to the American Governments for ratification.

Before the elaborate machinery thus set up at the Lima Conference could be set in motion, however, the outbreak of war created special and more urgent problems in the field of neutrality. To deal with them the Meeting of Foreign Ministers at Panama in 1939 created the Inter-American Neutrality Committee, composed of seven experts in the field of international law, to be designated by the Governing Board of the Pan American Union.* A year later, at the Meeting of Foreign Ministers at Habana, the Neutrality Committee was assigned the special task of preparing a draft convention which was to "cover completely all the principles and rules generally recognized in international law in matters of neutrality." At the same time the Habana Meeting, contemplating the attacks being made upon the very bases of law and of pacific relations, called upon the American Governments to take the necessary measures to carry out the resolutions adopted by the Lima Conference and urged the various agencies of codification to submit the results of their studies as soon as possible.

The latest agency of general codification is the Inter-American Juridical Committee, created by the Meeting of Foreign Ministers at Rio de Janeiro in 1942 as successor to the Neutrality Committee established at Panama in 1939. In addition to numerous other functions assigned to it the Juridical Committee was called upon "to develop and coordinate the work of codifying international law, without prejudice to the duties entrusted to existing organizations."

Such, in brief, is the historical development of the agencies created by the American Governments for the codification of international law. It may now be profitable to reexamine each of them individually, so as to obtain a clearer understanding of the extent to which their functions overlap and

^{*} In fulfillment of Resolution V of the Panama Meeting, the Governing Board of the Pan American Union decided to call upon the Governments of Argentina, Brazil, Chile, Costa Rica, Mexico, United States of America, and Venezuela to designate each a member of the Committee.

duplicate one another, and in order to determinate, if possible, why particular agencies have failed to function effectively and what further coordination of their work may be necessary to produce the desired results.

1. The National Committees. These Committees are appointed by each separate government, in number thought desirable. Their function is to undertake doctrinal studies in public and private international law and in comparative legislation, and to transmit preliminary drafts, with explanatory summaries, to the three Permanent Committees of Rio de Janeiro, Montevideo and Habana respectively. The latest report of the Juridical Division of the Pan American Union indicates that nineteen of the twenty-one American Governments have appointed their National Committees of Codification. Only the United States and Haiti have failed to carry out the provision of the Montevideo resolution.

The Juridical Committee finds no criticism to make with respect to the composition and functions of the National Committees. It is clear that, if effectively organized, they may make a very useful contribution to the work of codification. The Lima resolution (XVII) made provision that they should serve as consultative agencies for their respective governments. particular function is obviously one which can only be carried out if the individual governments desire to take advantage of their particular commit-But apart from such direct cooperation with their governments, it would appear that the effectiveness of the work of the National Committees will depend to a greater or lesser degree upon the financial support which they may be able to obtain. Few jurists have the leisure to devote themselves to the doctrinal studies asked of them, and few are in a position to travel and to hold meetings with their fellow jurists if they must pay personally the necessary costs of travel and maintenance. University professors are as a rule expected to render their services free, but there are limitations to what may be reasonably requested of them under these conditions.

For this reason the contribution of the National Committees to the work of codification has not been significant. None of the committees have thus far reported projects bearing upon the work of general codification contemplated by the Lima Conference, and only two committees have reported upon any of the specific topics referred by the Lima Conference to the codification agencies.

2. The Permanent Committees of Rio de Janeiro, Montevideo and Habana. These committees were created by the Habana Conference to relieve the International Commission of Jurists of the preliminary technical work incident to the codification of public and private international law and of comparative legislation and uniformity of legislations. Members of the three committees were to be selected respectively by each of the three governments from among their national societies of international law. Their functions were to inquire into the subjects ripe for codification, and on the basis of the answers received from the American Governments to prepare

draft projects which might ultimately be submitted to the International Commission of Jurists.

The failure of the three Committees to function within the succeeding five years led the Montevideo Conference of 1933 to pass them by in favor of new agencies, the Committee of Experts and the National Committees. But the Permanent Committees were reëstablished by the Conference for the Maintenance of Peace at Buenos Aires in 1936 as one of the "centralized and permanent" agencies to be entrusted with the preliminary work of codification.* The Lima Conference of 1938, in making a new attempt to coordinate the agencies entrusted with the work of codification and to define more precisely their duties, continued the three Permanent Committees, but made provision that, in addition to the members appointed by the government of the country in which the committee had its seat, six members should be designated by the governments of the other American States, in order that all the American Republics might be represented on one or other of the three committees.

The provision of the Lima Conference for the addition of six non-national members proved to be unfortunate. Theoretically it was desirable to make the committees more inter-American in character; but the means taken were not adequate. Unless the non-national members were to be selected from the members of the diplomatic corps of their respective States, it could hardly be expected that jurists from distant countries would be able to attend sessions of the committees with sufficient regularity to justify the "centralized and permanent" character which the committees were intended to have, or to permit them to contribute seriously to the technical work assigned to them. At the date of present writing the three committees still remain unorganized for want of a full complement of non-national members.

Apart from the difficulty created by the provision for non-permanent members, it is doubtful whether the Permanent Committees could meet the heavy burden of work entrusted to them. The lists of the national members of the committees include the names of jurists distinguished in their respective fields of law. But they are in most cases persons preoccupied with other official duties, for whom the work of codification must of necessity be done in their limited leisure time. The record shows that, while the committees met from time to time in both formal and informal sessions, the Permanent Committee of Rio de Janeiro was the only one which was able to take even the most preliminary steps towards the actual work of codification. In October 1937, the Rio Committee addressed a communication to the National Committees requesting them to send it relevant studies in the field of public international law for the purpose of aiding the Committee in the preparation of appropriate projects to be submitted to the Lima Conference

^{*}The Permanent Committee of Habana was reëstablished by decree of the Cuban Government No. 1964, September 24, 1938; the Montevideo Committee by decree of the Uruguayan Government, July 29, 1938; and the Rio de Janeiro Committee by decree of the Brazilian Government, No. 1767, July 6, 1937.

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the following year. Inasmuch as the Pan American Union was not informed as to the outcome of the request made of the National Committees, it may be assumed that no results were obtained. In compliance with a resolution of the Governing Board of the Pan American Union, the Rio Committee prepared four projects for submission to the Lima Conference. These projects were duly considered by the Conference, and the record shows that they influenced its decisions. Projects were referred by the Lima Conference to all three committees, but there is no record of any action being taken by the committees in regard to them. Indeed, the inability of the committees to organize themselves would have made any official action impossible.

3. The Committee of Experts. This committee was created by the Montevideo Conference of 1933 with the object of organizing the preparatory stages of the work of codification. Unlike the permanent committees created by the Habana Conference, which were primarily national in character and which had failed to meet expectations, the Committee of Experts was to have an inter-American character, and the members were to be selected by a system which would insure the general confidence of the American Each government was to draw up a list of not to exceed five Governments. persons having the requisite qualifications, and from the combined lists each government was to designate seven persons, of whom only two might be its The Committee was to perform functions similar to those that had been assigned to the Permanent Committees by the Habana Conference of 1928, namely, the selection of subjects suitable for codification, the submission of questionnaires to the National Committees, and the preparation of draft projects for the International Commission of Jurists. In order to create a closer bond with the Commission of Jurists, the Committee of Experts was made a subcommittee of the Commission, its members being exofficio members of the Commission when in session.

The Buenos Aires Conference of 1936, realizing that it was not possible for the Committee of Experts to meet for length of time required to prepare preliminary projects of codification, reëstablished the Permanent Committees created by the Habana Conference and assigned to the Committee of Experts the revision and coördination of the draft conventions prepared by the Permanent Committees. The Committees of Experts, after completing its work of revision and coördination, was to forward to the governments its report upon the projects submitted to it, and the governments were then in turn to submit them to the International Commission of Jurists.

The Lima Conference of 1938 enlarged the membership of the Committee of Experts to nine members, but made no substantial change in the functions assigned to the committee. In view of the fact that the International Commission of Jurists, which had been called upon to determine the organization, functions and terms of office of the Committee of Experts, had not yet held a

^{*} Attention should be called to the necessity of making some provision for the case in which tie vetes might make a decision impossible.

meeting, the Lima Conference fixed the terms of the members of the Committee at five years and provided that the existing members should hold office until April 5, 1942. No elections were held at the end of that period, and on June 4, 1942, the Governing Board of the Pan American Union recommended to the American Governments that the members of the Committee of Experts whose terms had expired should continue to hold office until the meeting of the Ninth International Conference of American States.

The Committee of Experts held its first meeting in Washington beginning April 19, 1937. Before the Committee were a number of topics submitted to it by the Buenos Aires Conference of 1936. These topics were distributed among the members for examination and study, and arrangements were made for an exchange of views among the members of the Committee and for the submission of the results of their studies to the Lima Conference of 1938. second meeting of the Committee was held in advance of and during the Lima Conference, being attended by four of the seven members. meeting, lasting from November 30 to December 20, 1938, the Committee approved a number of reports which had been prepared by its individual These reports were in turn submitted to the Lima Conference. The Conference, however, found it impossible to take definitive action in relation to the various topics, finding it more advisable to refer the reports of the Committee and the documentary material accompanying them to the American Governments for their observations or to the International Conference of American Jurists.

It is difficult to comment constructively upon the work of the Committee of Experts, because the technical problems submitted to the Committee inevitably reflected the political conditions of the years 1936–1939. The topics: "Definition of the Aggressor, and Sanctions," "Nationality," and "Immunity of Government Vessels" bore a direct relation to the general international situation; while the topics "Investigation, Conciliation, and Arbitration" and "Code of Peace" involved points of view too divergent to permit the adoption of the reports of the Committee by the Conference without prior submission to the American Governments. On the difficult subject of pecuniary claims the Committee succeeded in formulating a report, although it was of necessity limited to points upon which the members of the Committee were able to agree in the brief time at their disposal.

No reports were presented to the Lima Conference by the Committee of Experts upon other subjects than those specifically referred to it by the Buenos Aires Conference. A report was, however, presented upon the existing system of codifying international law, which the Committee found to be unnecessarily complicated and lacking in coördination. On the basis of this report, and of other projects submitted, the Lima Conference adopted Resolution XVII, to which reference will be made later.

The Juridical Committee finds that the inter-American membership of the Committee of Experts is a feature of the highest importance, which should

be preserved as an essential part of the preliminary work of codification. But the experience of the Committee of Experts makes it clear that if a committee of that character is to do effective work, it must be organized upon a more permanent basis, so as to be able to hold regular annual or semiannual meetings, which proved to be impracticable in the case of the Com-The personnel of such a permanent committee should mittee of Experts. be not only jurists of the high qualifications possessed by the members of the Committee of Exerts, but jurists who are in a position to give a large part of their time to the work of codification. Compensation should be made for the services of the members of such a permanent committee upon the basis of the importance of the work assigned to them and the time spent in carrying it Moreover, the committee should have at its disposal a secretariat and a technical staff adequate for the performance of the duties assigned to the The fundamental obstacle to the more adequate fulfillment by the Committee of Experts of the duties assigned to it was the fact that its members had professional duties which prevented them from conducting the studies and carrying on the correspondence required by the technical work of It is no reflection upon the distinguished jurists who comcodification. posed the Committee between 1936 and 1942 that they were unable to make greater progress in the field of codification. The obstacle lay in the fact that the work required a far greater concentration of effort than was practically possible under the circumstances.

4. The International Conference of American Jurists. The International Conference of Jurists is the legal successor to the International Commission of Jurists created by the Rio de Janeiro Conference of 1906, but its functions differ considerably from those of the earlier body. When first created the International Commission was intended to do the preliminary work later entrusted to the National Committees, the Permanent Committees of Rio de Janeiro, of Montevideo, and Habana, and the Committee of Experts. was to draft codes of public and private international law and submit them to the Conference of American States which was to meet four years later. failure, however, of the governments to ratify in due time the convention creating it delayed the meeting of the Commission until 1912, and the outbreak of war led to the abandonment of the plans for a meeting in 1914. Santiago Conference of 1923 reorganized the Commission, but left unaltered its essential character as a body of experts assigned to do the preparatory work of codification. It was in that capacity that the Commission met in Rio de Janeiro in 1927 and with the cooperation of the American Institute of International Law drafted a series of twelve projects for submission to the Habana Conference of 1928. In spite of the practical gains thus resulting from the work of the Commission, the Habana Conference found it advisable to create the Permanent Committees of Rio de Janeiro, Montevideo and Habana, and to assign to the Commission of Jurists a secondary role in the form of a possible revisory body for the work of the three Permanent Committees. As a result no meetings of the Commission were held between 1928 and 1933.

The Montevideo Conference of 1933 provided for the continuance of the Commission of Jurists (called Jurisconsults by mistake in translation) and assigned to it the work of revising the projects of the newly created Committee of Experts which replaced the Permanent Committees of Rio de Janeiro, Montevideo and Habana in the preparatory work of codification. A close link between the two bodies was provided for by making the Committee of Experts a sub-committee of the Commission of Jurists; and it appears to have been the intention of the Montevideo Conference that the Commission should hold regular meetings without awaiting the call of the governments. The resolution (LXX) of the Montevideo Conference does not make clear the scope of the exercise of the plenipotentiary powers which the members of the Commission of Jurists were to be given.

The Buenos Aires Conference of 1936, in reviving the Permanent Committees established at the Habana Conference in 1928, and thus creating two distinct bodies engaged in the preparatory work of codification, left the functions of the International Commission unchanged. When, however, the Lima Conference adopted its comprehensive resolution (XVII) dealing with Methods for the Codification of International Law it was provided that the Commission of Jurists, thereafter to be called the "International Conference of Jurists," should function "at the last stage of procedure"; and it was made clear that the conventions and other instruments adopted by the Conference of Jurists in the exercise of the plenipotentiary powers of its members should be deposited with the Pan American Union and transmitted to the American Governments for ratification, as if they had been adopted at a regular international conference. The Conference was assigned as its function "the revision, coordination, approval, modification or rejection" of the drafts prepared by the Committee of Experts; and provision was made that it should be convoked by the Governing Board of the Pan American Union when, in the judgment of the Board, there were matters sufficient to justify a meeting.

In view of the fact that the International Conference of Jurists has as yet held no meetings, for lack of projects from the committees engaged in the preparatory work of codification, it is not possible to criticize the Conference in the new role it has been called upon to perform. The Lima Conference was apparently of the opinion that no matter how carefully the preparatory work of codification might be done, the final revision of the drafts presented by the Committee of Experts could be carried out more efficiently by a body of jurists possessing plenipontentiary powers than by the submission of the drafts either to the individual governments directly, or to a regular international conference of American States attended by delegates preoccupied with the political, economic and social problems which fill the agenda of regular inter-American conferences. The Juridical Committee is of the

opinion that the decision of the Lima Conference in this respect was well founded, and that the International Conference of Jurists should be permitted to demonstrate in practice the special role it has been assigned to play.

Plan Proposed by the Juridical Committee

The Juridical Committee, after examining in detail the organization and functions of the various inter-American agencies now engaged in the codification of international public and private law, is convinced that the work of codification can only be carried on effectively if it is entrusted primarily to a small committee of technical experts, representative of the whole inter-American community, permanent in character, authorized to act as a central agency for the coordination of the activities of other bodies, and having at its disposal the necessary technical and secretarial assistance.

While it is recommended that the proposed codification committee, to which the name "Inter-American Codification Committee" has been given, should be a body of technical experts, the Juridical Committee would observe that the term "technical" should be taken in the sense appropriate to the character of the fields of law which it is proposed to codify. In the case of public international law many of the subjects which it would be desirable to codify involve questions of political policy as well as of legal principle. Hence the members of the committee should be jurists who have not only a knowledge of the historical development of international law and of the rules of customary and conventional law, but also an understanding of the function of law as an instrument for the maintenance of law and order in the international community and the promotion of justice. The task of codifying international law is in large part a work de lege ferenda, the formulation of new rules to meet the changing conditions in the mutual relations of States. It has been observed by jurists of high standing that in no other field of human relationships has the law remained so far behind the conditions of the Hence the members of the proposed committee should be jurists who are in touch with the political, economic and social factors involved in the maintenance of law and order, and who are guided by a high sense of their obligations to promote international justice.

The membership of the proposed Codification Committee should be representative of the inter-American community. It is suggested that the committee might be composed of nine members elected by the system of voting adopted by the Montevideo Conference for the Committee of Experts. The Committee itself should have the power to appoint its own officers, including an Executive Director to whom the direction of the technical work of codification might be entrusted.

In recommending that the Codification Committee should be permanent in character the Juridical Committee understands the word "permanent" in two senses. In the first place it would seem desirable that the members of the Codification Committee should be elected for periods of not less than five years, so as to give some degree of continuity to their work. Re-election should be permitted, although it might be indicated that re-election should not be a matter of courtesy but of recognition of services rendered. second place the designation "permanent" should be taken in the sense that the members of the committee should be in a position to give a substantial part of their time to the work of codification. The Juridical Committee is of the opinion that the chief reason for the inadequacy of the existing agencies of codification to carry forward the work more effectively has been the fact that none of the agencies has been in any real sense permanent. pointed out above, the persons engaged in the work have been jurists who. in most cases, could give but a small part of their time to the work. American Governments are convinced of the importance of the work of codification, as is indicated by the resolutions adopted at their conferences and consultative meetings, they should make the same financial provision for the work that they would make for the promotion of other interests of equal importance. They should make it possible for jurists of ability to put aside temporarily their other occupations and give to the work of codification such time as may be necessary to bring about the results desired.

In the resolution (XVII) of the Lima Conference dealing with Methods for the Codification of International Law special stress was put upon the necessity of coordinating the action of the agencies entrusted with the work of codification. But the plan established by the resolution failed to establish any bond of union between the various agencies. Each forwarded its studies and projects to the agency next above it in rank, but no adequate provision was made for maintaining contacts between them. The Juridical Committee is of the opinion that one of the chief functions of the proposed Codification Committee would be to act as an organ of communication with the various bodies, both public and private, engaged in the work of codification, as well as with outstanding American jurists. At the same time the committee should be in direct contact with the Foreign Offices of the American Governments through correspondence with liaison officers specially appointed Contacts should also be maintained with the codification for that purpose. agency which, following the traditions of the League of Nations, will doubtless be set up within the secretariat of the new international organization to be established after the war.

If the Codification Committee is to perform its work successfully it would seem obvious that it must have at its disposal an adequate technical staff to assist it in carrying on the necessary research work, as well as a clerical force sufficiently large to enable it to perform properly its functions as a central organ of communication. Adequate library facilities will also be essential to rapid progress in the work of codification.

In making these observations the Juridical Committee has taken into account the fact that the Sixth International Conference of American States called upon the Pan American Union to create a special secretariat for the

While the Montevideo resolution limited the functions work of codification. of this secretariat to those of a purely administrative character there is no reason why a later conference should not extend its functions to include the technical work of research. It is a question for consideration, however, whether the responsibility for the work of research should not rest with the body primarily charged with the work of codification; and whether the necessary contacts between the Codification Committee and the other bodies engaged in the work of codification, as well as between the members of the Committee itself, should not be made directly by a secretariat within the Committee rather than indirectly through the secretariat of the Pan Ameri-There are obvious advantages in making use of the facilities for both research and correspondence already available through the Pan American Union, if this could be done without lessening the responsibility of the Codification Committee. Attention should be called, however, to the fact that in case new functions were assigned to the Juridical Division of the Pan American Union, it would be necessary to enlarge the present staff of the Division to the degree necessary to undertake the elaborate studies and extensive correspondence demanded by the work of codification if it is to be pushed forward with any degree of success. One way of assigning more extensive functions to the Juridical Division of the Union, so as to make it in effect a secretariat of the Codification Committee, without conflicting with the functions of the Codification Committee itself, would be to provide that the Executive Director of the Codification Committee, who would be responsible to it for the direction of the work of codification, should be permanently resident at the seat of the Union. Otherwise there would be serious loss of time and the probability of misunderstandings in respect to the organization In such case it would not be necessary for the Codification Committee to have a permanent seat of its own. Instead, it might hold its annual or semi-annual meetings in different capitals of the American Republics, so as to suit the convenience of its members and to facilitate the presence of other jurists who might be invited to meet with the Committee.

The choice therefore seems to be between a committee with no permanent seat of its own, but with an Executive Director resident at the seat of the Pan American Union and working in close collaboration with the agencies of the Union, and on the other hand a committee with its permanent seat in some American capital and a separate secretariat of its own, including technical assistants and a working library.

While the Juridical Committee recommends that the chief work of codification should be entrusted to a small committee of experts of the character above described, it recommends at the same time that the existing International Conference of American Jurists be retained as the last stage of the procedure of codification, in accordance with the provisions of Resolution XVII of the Lima Conference. It seems clear that the final revision of the work of the central agency or committee proposed in the plan submitted by

the Juridical Committee should be entrusted not to a regular inter-American conference, which would be preoccupied with numerous political, economic and social problems, but to a special conference of jurists with plenipotentiary powers.

The Juridical Committee also recommends that the existing National Committees be continued with their present functions. It is to be expected that the work of these National Committees will be greatly encouraged and facilitated if they can be kept in close contact with one another through the central agency of codification. In like manner it is recommended that the Permanent Committee of Rio de Janeiro on Public International Law be requested to act as a consultative body during the terms of its present members.

It should be observed that the recommendation here made by the Juridical Committee deals only with the reorganization of the inter-American agencies now engaged in the codification of international law, and that it does not extend to the methods to be followed in conducting the actual work of codification, nor the fields of law which appear to be ripe for codification. Both of these topics will form the subject of a later recommendation. For this reason the Juridical Committee has not thought it necessary to discuss the relation between the inter-American agencies of codification and those which may possibly be created by the new international organization to be established after the war. The coordination of inter-American and international juridical institutions is a problem of large scope, which cannot be passed upon with finality at the present moment and which in any case should form the subject of a special report.

RIO DE JANEIRO, October 17, 1944.

- (8) Francisco Campos
- (8) CHARLES G. FENWICK
- (S) F. NIETO DEL Río
- (S) A. Gómez Robledo

UNITED STATES—GREAT BRITAIN—SOVIET UNION REPORT OF TRIPARTITE CONFERENCE OF BERLIN*

July 17-August 2, 1945

On July 17, 1945, the President of the United States of America, Harry S. Truman, the Chairman of the Council of People's Commissars of the Union of Soviet Socialist Republics, Generalissimo J. V. Stalin, and the Prime Minister of Great Britain, Winston S. Churchill, together with Mr. Clement R. Attlee, met in the Tripartite Conference of Berlin. They were accompanied by the foreign secretaries of the three governments, Mr. James

*Potsdam communiqué; Department of State Radio Bulletin No. 184. Sometimes referred to as the "Potsdam declaration".

F. Byrnes, Mr. V. M. Molotov, and Mr. Anthony Eden, the Chiefs of Staff, and other advisers.

There were nine meetings between July seventeenth and July twenty-fifth. The conference was then interrupted for two days while the results of the British general election were being declared.

On July twenty-eighth Mr. Attlee returned to the conference as Prime Minister, accompanied by the new Secretary of State for Foreign Affairs, Mr. Ernest Bevin. Four days of further discussion then took place. During the course of the conference there were regular meetings of the heads of the three governments accompanied by the foreign secretaries, and also of the foreign secretaries alone. Committees appointed by the foreign secretaries for preliminary consideration of questions before the conference also met daily.

The meetings of the conference were held at the Cecilienhof near Potsdam. The conference ended on August 2, 1945.

Important decisions and agreements were reached. Views were exchanged on a number of other questions and consideration of these matters will be continued by the council of foreign ministers established by the conference.

President Truman, Generalissimo Stalin and Prime Minister Attlee leave this conference, which has strengthened the ties between the three governments and extended the scope of their collaboration and understanding, with renewed confidence that their governments and peoples, together with the other United Nations, will ensure the creation of a just and enduring peace.

II. Establishment of a Council of Foreign Ministers. The Conference reached an agreement for the establishment of a Council of Foreign Ministers representing the five principal powers to continue the necessary preparatory work for the peace settlements and to take up other matters which from time to time may be referred to the Council by agreement of the governments participating in the Council.

The text of the agreement for the establishment of the Council of Foreign Ministers is as follows:

- 1. There shall be established a Council composed of the foreign ministers of the United Kingdom, the Union of Soviet Socialist Republics, China, France and the United States.
- 2. (i) The Council shall normally meet in London, which shall be the permanent seat of the joint secretariat which the Council will form. Each of the foreign ministers will be accompanied by a high-ranking deputy, duly authorized to carry on the work of the Council in the absence of his foreign minister, and by a small staff of technical advisers.
- (ii) The first meeting of the Council shall be held in London not later than September 1, 1945. Meetings may be held by common agreement in other capitals as may be agreed from time to time.
 - (3) (i) As its immediate important task, the Council shall be authorized

to draw up, with a view to their submission to the United Nations, treaties of peace with Italy, Rumania, Bulgaria, Hungary and Finland, and to propose settlements of territorial questions outstanding on the termination of the war in Europe. The Council shall be utilized for the preparation of a peace settlement for Germany to be accepted by the government of Germany when a government adequate for the purpose is established.

- (ii) For the discharge of each of these tasks the Council will be composed of the members representing those states which were signatory to the terms of surrender imposed upon the enemy state concerned. For the purpose of the peace settlement for Italy, France shall be regarded as a signatory to the terms of surrender for Italy. Other members will be invited to participate when matters directly concerning them are under discussion.
- (iii) Other matters may from time to time be referred to the Council by agreement between the member governments.
- 4. (i) Whenever the Council is considering a question of direct interest to a state not represented thereon, such state should be invited to send representatives to participate in the discussion and study of that question.
- (ii) The Council may adapt its procedure to the particular problem under consideration. In some cases it may hold its own preliminary discussions prior to the participation of other interested states. In other cases, the Council may convoke a formal conference of the state chiefly interested in seeking a solution of the particular problem.

In accordance with the decision of the conference the three governments have each addressed an identical invitation to the governments of China and France to adopt this text and to join in establishing the Council.

The establishment of the Council of Foreign Ministers for the specific purposes named in the text will be without prejudice to the agreement of the Crimea Conference that there should be periodic consultation among the foreign secretaries of the United States, the Union of Soviet Socialist Republics and the United Kingdom.

The conference also considered the position of the European Advisory Commission in the light of the agreement to establish the Council of Foreign Ministers. It was noted with satisfaction that the Commission had ably discharged its principal tasks by the recommendations that it had furnished for the terms of Germany's unconditional surrender, for the zones of occupation in Germany and Austria, and for the inter-Allied control machinery in those countries. It was felt that further work of a detailed character for the coördination of allied policy for the control of Germany and Austria would in future fall within the competence of the Allied Control Council at Berlin and the Allied Commission at Vienna. Accordingly, it was agreed to recommend that the European Advisory Commission be dissolved.

III. Germany. The Allied Armies are in occupation of the whole of Germany and the German people have begun to atone for the terrible

crimes committed under the leadership of those whom in the hour of their success, they openly approved and blindly obeyed.

Agreement has been reached at this conference on the political and economic principles of a coördinated Allied policy toward defeated Germany during the period of Allied control.

The purpose of this agreement is to carry out the Crimea Declaration on Germany. German militarism and Nazism will be extirpated and the Allies will take in agreement together, now and in the future, the other measures necessary to assure that Germany never again will threaten her neighbors or the peace of the world.

It is not the intention of the Allies to destroy or enslave the German people. It is the intention of the Allies that the German people be given the opportunity to prepare for the eventual reconstruction of their life on a democratic and peaceful basis. If their own efforts are steadily directed to this end, it will be possible for them in due course to take their place among the free and peaceful peoples of the world.

The text of the agreement is as follows:

The Political and Economic Principles to Govern the Treatment of Germany in the Initial Control Period. A. Political Principles. 1. In accordance with the agreement on control machinery in Germany, supreme authority in Germany is exercised on instructions from their respective governments, by the Commanders-in-Chief of the armed forces of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics, and the French Republic, each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole, in their capacity as members of the Control Council.

- 2. So far as is practicable, there shall be uniformity of treatment of the German population throughout Germany.
- 3. The purposes of the occupation of Germany by which the Control Council shall be guided are:
- (i) The complete disarmament and demilitarization of Germany and the elimination or control of all German industry that could be used for military production. To these ends: (a) All German land, naval and air forces, the S.S., S.A., S.D., and Gestapo, with all their organizations, staffs and institutions, including the General Staff, the Officers' Corps, Reserve Corps, military schools, war veterans' organizations and all other military and quasi-military organizations, together with all clubs and associations which serve to keep alive the military tradition in Germany, shall be completely and finally abolished in such manner as permanently to prevent the revival or reorganization of German militarism and Nazism. (b) All arms, ammunition and implements of war and all specialized facilities for their production shall be held at the disposal of the Allies or destroyed. The maintenance and production of all aircraft and all arms, ammunition and implements of war shall be prevented.

- (ii) To convince the German people that they have suffered a total military defeat and that they cannot escape responsibility for what they have brought upon themselves, since their own ruthless warfare and the fanatical Nazi resistance have destroyed German economy and made chaos and suffering inevitable.
- (iii) To destroy the National Socialist Party and its affiliated and supervised organizations, to dissolve all Nazi institutions, to ensure that they are not revived in any form, and to prevent all Nazi and militarist activity or propaganda.
- (iv) To prepare for the eventual reconstruction of German political life on a democratic basis and for eventual peaceful cooperation in international life by Germany.
- 4. All Nazi laws which provided the basis of the Hitler regime or established discrimination on grounds of race, creed, or political opinion shall be abolished. No such discriminations, whether legal, administrative or otherwise, shall be tolerated.
- 5. War criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgment. Nazi leaders, influential Nazi supporters and high officials of Nazi organizations and institutions and any other persons dangerous to the occupation or its objectives shall be arrested and interned.
- 6. All members of the Nazi party who have been more than nominal participants in its activities and all other persons hostile to allied purposes shall be removed from public and semi-public office, and from positions of responsibility in important private undertakings. Such persons shall be replaced by persons who, by their political and moral qualities, are deemed capable of assisting in developing genuine democratic institutions in Germany.
- 7. German education shall be so controlled as completely to eliminate Nazi and militarist doctrines and to make possible the successful development of democratic ideas.
- 8. The judicial system will be reorganized in accordance with the principles of democracy, of justice under law, and of equal rights for all citizens without distinction of race, nationality or religion.
- 9. The administration of affairs in Germany should be directed towards the decentralization of the political structure and the development of local responsibility. To this end:
- (i) Local self-government shall be restored throughout Germany on democratic principles and in particular through elective councils as rapidly as is consistent with military security and the purposes of military occupation;
- (ii) All democratic political parties with rights of assembly and of public discussion shall be allowed and encouraged throughout Germany;

- (iii) Representative and elective principles shall be introduced into regional, provincial and state (land) administration as rapidly as may be justified by the successful application of these principles in local self-government;
- (iv) For the time being no central German government shall be established. Notwithstanding this, however, certain essential central German administrative departments, headed by state secretaries, shall be established, particularly in the fields of finance, transport, communications, foreign trade and industry. Such departments will act under the direction of the Control Council.
- 10. Subject to the necessity for maintaining military security, freedom of speech, press and religion shall be permitted, and religious institutions shall be respected. Subject likewise to the maintenance of military security, the formation of free trade unions shall be permitted.
- B. Economic Principles. 11. In order to eliminate Germany's war potential, the production of arms, ammunition and implements of war as well as all types of aircraft and sea-going ships shall be prohibited and prevented. Production of metals, chemicals, machinery and other items that are directly necessary to a war economy shall be rigidly controlled and restricted to Germany's approved post-war peacetime needs to meet the objectives stated in paragraph 15. Productive capacity not needed for permitted production shall be removed in accordance with the reparations plan recommended by the Allied Commission on reparations and approved by the governments concerned or if not removed shall be destroyed.
- 12. At the earliest practicable date, the German economy shall be decentralized for the purpose of eliminating the present excessive concentration of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements.
- 13. In organizing the German economy, primary emphasis shall be given to the development of agriculture and peaceful domestic industries.
- 14. During the period of occupation Germany shall be treated as a single economic unit. To this end common policies shall be established in regard to: (a) Mining and industrial production and allocations: (b) Agriculture, forestry and fishing; (c) Wages, prices and rationing; (d) Import and export programs for Germany as a whole; (e) Currency and banking, central taxation and customs; (f) Reparation and removal of industrial war potential; (g) Transportation and communications. In applying these policies account shall be taken, where appropriate, of varying local conditions
- 15. Allied controls shall be imposed upon the German economy but only to the extent necessary: (a) To carry out programs of industrial disarmament and demilitarization, of reparations, and of approved exports and imports. (b) To assure the production and maintenance of goods and services required to meet the needs of the occupying forces and displaced persons in Germany and essential to maintain in Germany average living standards

not exceeding the average of the standards of living of European countries. (European countries means all European countries excluding the United Kingdom and the Union of Soviet Socialist Republics.) (c) To insure in the manner determined by the Control Council the equitable distribution of essential commodities between the several zones so as to produce a balanced economy throughout Germany and reduce the need for imports. (d) To control German industry and all economic and financial international transactions, including exports and imports, with the aim of preventing Germany from developing a war potential and of achieving the other objectives named herein. (e) To control all German public or private scientific bodies, research and experimental institutions, laboratories, et cetera, connected with economic activities.

- 16. In the imposition and maintenance of economic controls established by the Control Council, German administrative machinery shall be created and the German authorities shall be required to the fullest extent practicable to proclaim and assume administration of such controls. Thus it should be brought home to the German people that the responsibility for the administration of such controls and any breakdown in these controls will rest with themselves. Any German controls which may run counter to the objectives of occupation will be prohibited.
- 17. Measures shall be promptly taken: (a) To effect essential repair of transport; (b) To enlarge coal production; (c) To maximize agricultural output; and (d) To effect emergency repair of housing and essential utilities.
- 18. Appropriate steps shall be taken by the Control Council to exercise control and the power of disposition over German-owned external assets not already under the control of United Nations which have taken part in the war against Germany.
- 19. Payment of reparations should leave enough resources to enable the German people to subsist without external assistance. In working out the economic balance of Germany the necessary means must be provided to pay for imports approved by the Control Council in Germany. The proceeds of exports from current production and stocks shall be available in the first place for payment for such imports.

The above clause will not apply to the equipment and products referred to in paragraphs 4(A) and 4(B) of the Reparations Agreement.

- IV. Reparations from Germany. In accordance with the Crimea decision that Germany be compelled to compensate to the greatest possible extent for the loss and suffering that she has caused to the United Nations and for which the German people cannot escape responsibility, the following agreement on reparations was reached:
- 1. Reparation claims of the U.S.S.R. shall be met by removals from the zone of Germany occupied by the U.S.S.R. and from appropriate German external assets.

- 2. The U.S.S.R. undertakes to settle the reparation claims of Poland from its own share of reparations.
- 3. The reparation claims of the United States, the United Kingdom and other countries entitled to reparations shall be met from the western sones and from appropriate German external assets.
- 4. In addition to the reparations to be taken by the U.S.S.R. from its own zone of occupation, the U.S.S.R. shall receive additionally from the western zones:
- (A) 15 per cent of such usable and complete industrial capital equipment, in the first place from the metallurgical, chemical and machine manufacturing industries, as is unnecessary for the German peace economy and should be removed from the western zones of Germany, in exchange for an equivalent value of food, coal, potash, zinc, timber, clay products, petroleum products, and such other commodities as may be agreed upon.
- (B) 10-per cent of such industrial capital equipment as is unnecessary for the German peace economy and should be removed from the western zones, to be transferred to the Soviet Government on reparations account without payment or exchange of any kind in return.
- Removals of equipment as provided in (A) and (B) above shall be made simultaneously.
- 5. The amount of equipment to be removed from the western zones on account of reparations must be determined within six months from now at the latest.
- 6. Removals of industrial capital equipment shall begin as soon as possible and shall be completed within two years from the determination specified in paragraph 5. The delivery of products covered by 4(A) above shall begin as soon as possible and shall be made by the U.S.S.R. in agreed installments within five years of the date hereof. The determination of the amount and character of the industrial capital equipment unnecessary for the German peace economy and therefore available for reparations shall be made by the control council under policies fixed by the Allied Commission on Reparations, with the participation of France, subject to the final approval of the zone commander in the zone from which the equipment is to be removed.
- 7. Prior to the fixing of the total amount of equipment subject to removal, advance deliveries shall be made in respect of such equipment as will be determined to be eligible for delivery in accordance with the procedure set forth in the last sentence of paragraph 6.
- 8. The Soviet Government renounces all claims in respect of reparations to shares of German enterprises which are located in the western zones of occupation in Germany as well as to German foreign assets in all countries except those specified in paragraph 9 below.
- The Governments of the United Kingdom and the United States of America renounce their claims in respect of reparations to shares of German enterprises which are located in the eastern zone of occupation in Germany,

as well as to German foreign assets in Bulgaria, Finland, Hungary, Rumania and Eastern Austria.

- 10. The Soviet Government makes no claims to gold captured by the Allied troops in Germany.
- V. Disposal of the German Navy and Merchant Marine. The conference agreed in principle upon arrangements for the use and disposal of the surrendered German fleet and merchant ships. It was decided that the three governments would appoint experts to work out together detailed plans to give effect to the agreed principles. A further joint statement will be published simultaneously by the three governments in due course.

VI. City of Keenigsberg and the Adjacent Area. The conference examined a proposal by the Soviet Government that pending the final determination of territorial questions at the peace settlement the section of the western frontier of the Union of Soviet Socialist Republics which is adjacent to the Baltic Sea should pass from a point on the eastern shore of the Bay of Danzig to the east, north of Braunsberg-Goldap, to the meeting point of the frontiers of Lithuania, the Polish Republic and East Prussia.

The conference has agreed in principle to the proposal of the Soviet Government concerning the ultimate transfer to the Soviet Union of the City of Koenigsberg and the area adjacent to it as described above subject to expert examination of the actual frontier.

The President of the United States and the British Prime Minister have declared that they will support the proposal of the conference at the forthcoming peace settlement.

-VII. War Criminals. The three governments have taken note of the discussions which have been proceeding in recent weeks in London between British, United States, Soviet and French representatives with a view to reaching agreement on the methods of trial of those major war criminals whose crimes under the Moscow Declaration of October 1943 have no particular geographical localization. The three governments reaffirm their intention to bring those criminals to swift and sure justice. They hope that the negotiations in London will result in speedy agreement being reached for this purpose, and they regard it as a matter of great importance that the trial of those major criminals should begin at the earliest possible date. The first list of defendants will be published before September first.

VIII. Austria. The conference examined a proposal by the Soviet Government on the extension of the authority of the Austrian Provisional Government to all of Austria.

The three governments agreed that they were prepared to examine this question after the entry of the British and American forces into the City of Vienna.

IX. Poland. The conference considered questions relating to the Polish Provisional Government and the western boundary of Poland.

On the Polish Provisional Government of National Unity they defined their attitude in the following statement:

A—We have taken note with pleasure of the agreement reached among representative Poles from Poland and abroad which has made possible the formation, in accordance with the decisions reached at the Crimea Conference, of a Polish Provisional Government of National Unity recognized by the three powers. The establishment by the British and United States Governments of diplomatic relations with the Polish Provisional Government has resulted in the withdrawal of their recognition from the former Polish Government in London, which no longer exists.

The British and United States Governments have taken measures to protect the interest of the Polish Provisional Government as the recognized government of the Polish State in the property belonging to the Polish State located in their territories and under their control, whatever the form of this property may be. They have further taken measures to prevent alienation to third parties of such property. All proper facilities will be given to the Polish Provisional Government for the exercise of the ordinary legal remedies for the recovery of any property belonging to the Polish State which may have been wrongfully alienated.

The three powers are anxious to assist the Polish Provisional Government in facilitating the return to Poland as soon as practicable of all Poles abroad who wish to go, including members of the Polish armed forces and the Merchant Marine. They expect that those Poles who return home shall be accorded personal and property rights on the same basis as all Polish citizens.

The three powers note that the Polish Provisional Government in accordance with the decisions of the Crimea Conference has agreed to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot in which all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates, and that representatives of the Allied press shall enjoy full freedom to report to the world upon developments in Poland before and during the elections.

B—The following agreement was reached on the western frontier of. Poland:

In conformity with the agreement on Poland reached at the Crimea Conference the three heads of government have sought the opinion of the Polish Provisional Government of National Unity in regard to the accession of territory in the north and west which Poland should receive. The President of the National Council of Poland and members of the Polish Provisional Government of National Unity have been received at the conference and have fully presented their views. The three heads of government reaffirm their opinion that the final delimitation of the western frontier of Poland should await the peace settlement.

The three heads of government agree that, pending the final determination

of Poland's western frontier, the former German territories east of a line running from the Baltic Sea immediately west of Swinemunde, and thence along the Oder River to the confluence of the western Neisse River and along the western Neisse to the Czechoslovak frontier, including that portion of East Prussia not placed under the administration of the Union of Soviet Socialist Republics in accordance with the understanding reached at this conference and including the area of the former free City of Danzig, shall be under the administration of the Polish State and for such purposes should not be considered as part of the Soviet zone of occupation in Germany.

X. Conclusion of Peace Treaties and Admission to the United Nations Organization. The conference agreed upon the following statement of common policy for establishing, as soon as possible, the conditions of lasting peace after victory in Europe:

The three governments consider it desirable that the present anomalous position of Italy, Bulgaria, Finland, Hungary and Rumania should be terminated by the conclusion of peace treaties. They trust that the other interested Allied governments will share these views.

For their part the three governments have included the preparation of a peace treaty for Italy as the first among the immediate important tasks to be undertaken by the new Council of Foreign Ministers. Italy was the first of the Axis powers to break with Germany, to whose defeat she has made a material contribution, and has now joined with the Allies in the struggle against Japan. Italy has freed herself from the Fascist regime and is making good-progress towards the reëstablishment of a democratic government and institutions. The conclusion of such a peace treaty with a recognized and democratic Italian government will make it possible for the three governments to fulfill their desire to support an application from Italy for membership of the United Nations.

The three governments have also charged the Council of Foreign Ministers with the task of preparing peace treaties for Bulgaria, Finland, Hungary and Rumania. The conclusion of peace treaties with recognized democratic governments in these states will also enable the three governments to support applications from them for membership in the United Nations. The three governments agree to examine each separately in the near future, in the light of the conditions then prevailing, the establishment of diplomatic relations with Finland, Rumania, Bulgaria, and Hungary to the extent possible prior to the conclusion of peace treaties with those countries.

The three governments have no doubt that in view of the changed conditions resulting from the termination of the war in Europe, representatives of the Allied press will enjoy full freedom to report to the world upon developments in Rumania, Bulgaria, Hungary and Finland.

As regards the admission of other states into the United Nations Organization, Article 4 of the Charter of the United Nations declares that:

"1. Membership in the United Nations is open to all other peace-loving

states who accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations;

"2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

The three gramments, so far as they are concerned, will support applications for membership from those states which have remained neutral during the war and which fulfill the qualifications set out above.

The three governments feel bound however to make it clear that they for their part would not favor any application for membership put forward by the present Spanish Government, which, having been founded with the support of the Axis powers, does not, in view of its origins, its nature, its record and its close association with the aggressor states, possess the qualifications necessary to justify such membership.

XI. Territorial Trusteeships. The conference examined a proposal by the Soviet Government concerning trusteeship territories as defined in the decision of the Crimea Conference and in the Charter of the United Nations Organization.

After an exchange of views on this question it was decided that the disposition of any former Italian territories was one to be decided in connection with the preparation of a peace treaty for Italy and that the question of Italian territory would be considered by the September Council of Ministers of Foreign Affairs.

XII. Revised Allied Control Commission Procedure in Rumania, Bulgaria, and Hungary. The three governments took note that the Soviet representatives on the Allied Control Commissions in Rumania, Bulgaria and Hungary, have communicated to their United Kingdom and United States colleagues proposals for improving the work of the Control Commission, now that hostilities in Europe have ceased.

The three governments agreed that the revision of the procedures of the Allied Control Commissions in these countries would now be undertaken, taking into account the interests and responsibilities of the three governments which together presented the terms of armistice to the respective countries, and accepting as a basis the agreed proposals.

XIII. Orderly Transfers of German Populations. The conference reached the following agreement on the removal of Germans from Poland, Czechoslovakia and Hungary:

The three governments having considered the question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner.

Since the influx of a large number of Germans into Germany would

increase the burden already resting on the occupying authorities, they consider that the Allied Control Council in Germany should in the first instance examine the problem with special regard to the question of the equitable distribution of these Germans among the several zones of occupation. They are accordingly instructing their respective representatives on the Control Council to report to their governments as soon as possible the extent to which such persons have already entered Germany from Poland, Czechoslovakia and Hungary, and to submit an estimate of the time and rate at which further transfers could be carried out, having regard to the present situation in Germany.

The Czechoslovak Government, the Polish Provisional Government and the Control Council in Hungary are at the same time being informed of the above, and are being requested meanwhile to suspend further expulsions pending the examination by the governments concerned of the report from their representatives on the Control Council.

XIV. Military Talks. During the conference there were meetings between the Chiefs of Staff of the three governments on military matters of common interest.

UNITED STATES—FRANCE—GREAT BRITAIN—SOVIET UNION AGREEMENT FOR THE PROSECUTION AND PUNISHMENT OF THE MAJOR WAR CRIMINALS OF THE EUROPEAN AXIS*

August 8, 1945

Whereas the United Nations have from time to time made declarations of their intention that war criminals shall be brought to justice;

And whereas the Moscow Declaration of the 30th October 1943 on German atrocities in occupied Europe stated that those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments that will be created therein;

And whereas this declaration was stated to be without prejudice to the case of major criminals whose offenses have no particular geographic location and who will be punished by the joint decision of the Governments of the Allies;

Now, therefore, the Government of the Untied States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics (hereinafter called "the signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this agreement.

Article 1. There shall be established, after consultation with the Control * Department of State Bulletin, Vol. XIII, No. 320 (Aug. 12, 1945), p. 222.

Council for Germany, an International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location, whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

Article 2. The constitution, jurisdiction, and functions of the International Military Tribunal shall be those set out in the charter annexed to this agreement, which Charter shall form an integral part of this agreement.

- Article 3. Each of the signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The signatories shall also use their best endeavors to make available for investigation of the charges against, and the trial before the International Military Tribunal, such of the major war criminals as are not in the territories of any of the signatories.
- Article 4. Nothing in this agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.
- Article 5. Any Government of the United Nations may adhere to this agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.
- Article 6. Nothing in this agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any Allied territory or in Germany for the trial of war criminals.
- Article 7. This agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this agreement.

In witness whereof the undersigned have signed the present agreement.

Done in quadruplicate in London this eighth day of August, 1945, each in English, French, and Russian and each text to have equal authenticity.

For the Government of the United States of America: Robert H. Jackson. For the Provisional Government of the French Republic: Robert Folco. For the Government of the United Kingdom of Great Britain and Northern Ireland: Jowitt.

For the Government of the Union of Soviet Socialist Republics: I. T. NIKITCHENKO, A. N. TRAININ.

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

- I. CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL
- Article 1. In pursuance of the agreement signed on the eighth day of August, 1945, by the Government of the United States of America, the Provi-

sional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

- Article 2. The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfill his functions, his alternate shall take his place.
- Article 3. Neither the Tribunal, its members, nor their alternates can be challenged by the prosecution or by the defendants or their counsel. Each signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a trial other than by an alternate.

Article 4.

- (a) The presence of all four members of the Tribunal, or the alternate for any absent member, shall be necessary to constitute the quorum.
- (b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during that trial or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four signatories, the representative of that signatory on the Tribunal shall preside.
- (c) Save as aforesaid the Tribunal shall take decisions by a majority vote, and in case the votes are evenly divided the vote of the President shall be decisive, provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.
- Article 5. In case of need and depending on the number of the matters to be tried, other tribunals may be set up, and the establishment, functions and procedure of each tribunal shall be identical and shall be governed by this Charter.

II. JURISDICTION AND GENERAL PRINCIPLES

Article 6. The Tribunal established by the agreement referred to in article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against peace. Namely, planning, preparation, initiation, or waging of a war of aggression or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

Such violations shall include, but not be limited to, murder, ill treatment, or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity. Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated,

Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7. The official position of defendants, whether as heads of state or responsible officials in government departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8. The fact that the defendant acted pursuant to order of his government or of a superior shall not free him from responsibility but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 9. At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After receipt of the indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Article 10. In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any signatory shall have the right to bring individuals to trial for membership therein before national, military, or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

Article 11. Any person convicted by the Tribunal may be charged before a national, military, or occupation court, referred to in article 10 of this Charter, with a crime other than of membership in a criminal group or organization, and such court may after convicting him impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organization.

Article 12. The Tribunal shall have the right to take proceedings against a person charged with crimes set out in article 6 of this Charter in his absence if he has not been found or if the Tribunal for any reason finds it necessary in the interests of justice to conduct the hearing in his absence.

Article 13. The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

III. COMMITTEE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMINALS

Article 14. Each signatory shall appoint a chief prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The chief prosecutors shall act as a committee for the following purposes:

- (a) To agree upon a plan of the individual work of each of the chief prosecutors and his staff.
- (b) To settle the final designation of major war criminals to be tried by the Tribunal.
- (c) To approve the indictment and the documents to be submitted therewith.
- (d) To lodge the indictment and the accompanying documents with the Tribunal.
- (e) To draw up and recommend to the Tribunal for its approval draft rules of procedure contemplated by article 13 of this Charter. The Tribunal shall have power to accept with or without amendments or to reject the rules so recommended.

The committee shall act in all the above matters by a majority vote and shall appoint a chairman as may be convenient and in accordance with the principle of rotation, provided that, if there is an equal division of vote concerning the designation of a defendant to be tried by the Tribunal or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular defendant be tried or the particular charges be preferred against him.

Article 15. The chief prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

(a) Investigation, collection, and production before or at the trial of all necessary evidence.

- (b) The preparation of the indictment for approval by the committee in accordance with paragraph (c) of article 14 hereof.
- (c) The preliminary examination of all necessary witnesses and of the defendants.
 - (d) To act as prosecutor at the trial.
- (e) To appoint representatives to carry out such duties as may be assigned to them.
- (f) To undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the trial.
- 'It is understood that no witness or defendant detained by any signatory shall be taken out of the possession of that signatory without its assent.

IV. FAIR TRIAL FOR DEFENDANTS

Article 16. In order to insure fair trial for the defendants the following procedure shall be followed:

- (a) The indictment shall include full particulars specifying in detail the charges against the defendants. A copy of the indictment and of all the documents lodged with the indictment, translated into a language which he understands, shall be furnished to the defendant at a reasonable time before the trial.
- (b) During any preliminary examination or trial of a defendant he shall have the right to give any explanation relevant to the charges made against him.
- (c) A preliminary examination of a defendant and his trial shall be conducted in or translated into a language which the defendant understands.
- (d) A defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of counsel.
- (e) A defendant shall have the right through himself or through his counsel to present evidence at the trial in support of his defense and to cross-examine any witness called by the prosecution.

V. POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

Article 17. The Tribunal shall have the power:

- (a) To summon witnesses to the trial and to require their attendance and testimony and to put questions to them.
 - (b) To interrogate any defendant.
- (c) To require the production of documents and other evidentiary material.
 - (d) To administer oaths to witnesses.
- (e) To appoint officers for the carrying out of any task designated by the Tribunal, including the power to have evidence taken on commission.

Article 18. The Tribunal shall:

(a) Confine the trial strictly to an expeditious hearing of the issues raised by the charges.



- (b) Take strict measures to prevent any action which will cause unreasonable delay and rule out irrelevant issues and statements of any kind what-soever.
- (c) Deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any defendant or his counsel from some or all further proceedings but without prejudice to the determination of the charges.
- Article 19. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure and shall admit any evidence which it deems to have probative value.
- Article 20. The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.
- Article 21. The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other tribunals of any of the United Nations.
- Article 22. The permanent seat of the Tribunal shall be Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutor shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg and any subsequent trials shall be held at such places as the Tribunal may decide.
- Article 23. One or more of the chief prosecutors may take part in the prosecution at each trial. The function of any chief prosecutor may be discharged by him personally or by any person or persons authorized by him.

The function of counsel for a defendant may be discharged at the defendant's request by any counsel professionally qualified to conduct cases before the courts of his own country or by any other person who may be specially authorized thereto by the Tribunal.

Article 24. The proceedings at the trial shall take the following course:

- (a) The indictment shall be read in court.
- (b) The Tribunal shall ask each defendant whether he pleads "guilty" or "not guilty."
 - (c) The prosecution shall make an opening statement.
- (d) The Tribunal shall ask the prosecution and the defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.
- (e) The witnesses for the prosecution shall be examined and after that the witnesses for the defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the prosecution or the defense.

- (f) The Tribunal may put any question to any witness and to any defendant at any time.
- (g) The prosecution and the defense shall interrogate and may cross-examine any witnesses and any defendant who gives testimony.
 - (h) The defense shall address the court.
 - (i) The prosecution shall address the court.
 - (j) Each defendant may make a statement to the Tribunal.
 - (k) The Tribunal shall deliver judgment and pronounce sentence.

Article 25. All official documents shall be produced, and all court proceedings conducted, in English, French, and Russian and in the language of the defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting as the Tribunal considers desirable in the interests of justice and public opinion.

VI. JUDGMENT AND SENTENCE

Article 26. The judgment of the Tribunal as to the guilt or the innocence of any defendant shall give the reasons on which it is based and shall be final and not subject to review.

Article 27. The Tribunal shall have the right to impose upon a defendant, on conviction, death, or such other punishment as shall be determined by it to be just.

Article 28. In addition to any punishment imposed by it the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Article 29. In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences but may not increase the severity thereof. If the Control Council for Germany, after any defendant has been convicted and sentenced, discovers fresh evidence which in its opinion would found a fresh charge against him, the Council shall report accordingly to the Committee established under article 14 hereof for such action as they may consider proper, having regard to the interests of justice.

VII. EXPENSES

Article 30. The expenses of the Tribunal and of the trials shall be charged by the signatories against the funds allotted for maintenance of the Control Council for Germany.

UNITED STATES—CHINA—GREAT BRITAIN—SOVIET UNION UNCONDITIONAL SURRENDER OF JAPAN *

September, 1, 1945

1. We, acting by command of and in behalf of the Emperor of Japan, the *Congressional Record (daily), Vol. 91. No. 156 (Sept. 6, 1945), p. 8488.

Japanese Government, and the Japanese Imperial General Headquarters, hereby accept the provisions in the declaration issued by the heads of the Governments of the United States, China, and Great Britain on July 26, 1945, at Potsdam, and subsequently adhered to by the Union of Soviet Socialist Republics, which four Powers are hereafter referred to as the Allied Powers.†

- 2. We hereby proclaim the unconditional surrender to the Allied Powers of the Japanese Imperial General Headquarters and of all Japanese armed forces and armed forces under Japanese control wherever situated.
- 3. We hereby command all Japanese forces, wherever situated, and the Japanese people, to cease hostilities forthwith, to preserve and save from damage all ships, aircraft, and military and civil property, and to comply with all requirements which may be imposed by the supreme commander for the Allied Powers or by agencies of the Japanese Government at his direction.
- 4. We hereby command the Japanese Imperial General Headquarters to issue at once orders to the commanders of all Japanese forces and all forces under Japanese control, wherever situated, to surrender unconditionally themselves and all forces under their control.
- 5. We hereby command all civil, military, and naval officials to obey and enforce all proclamations, orders, and directives deemed by the supreme commander for the Allied Powers to be proper to effectuate this surrender and issued by him or under his authority, and we direct all such officials to remain at their posts and to continue to perform their noncombat duties unless specifically relieved by him or under his authority.
- 6. We hereby undertake for the emperor, the Japanese Government, and their successors to carry out the provisions of the Potsdam declaration in good faith, and to issue whatever orders and take whatever action may be required by the supreme commander for the Allied Powers or any other designated representative of the Allied Powers for the purpose of giving effect to that declaration.
- 7. We hereby command the Japanese Government and the Japanese Imperial General Headquarters at once to liberate all Allied prisoners of war and civilian internees under Japanese control and to provide for their protection, care, maintenance, and immediate transportation to places as directed.
- 8. The authority of the Emperor and the Japanese Government to rule the state shall be subject to the supreme commander for the Allied Powers, who will take such steps as he deems proper to effectuate these terms of surrender.

†The reference is not to the document printed above, p. 245, but to a short "Proclamation" to be found in *Department of State Bulletin*, Vol. XIII, No. 318 (July 29, 1945), p. 137, not reproduced here.

* 8.

EGYPT—IRAQ—LEBANON—SAUDI ARABIA—SYRIA— TRANSJORDAN—YEMEN

TEXT OF THE PACT OF THE ARAB LEAGUE *

[March 22, 1945]

His Excellency the President of the Syrian Republic;

His Royal Highness the Amir of Transjordan;

His Majesty the King of Iraq;

His Majesty the King of Saudi Arabia;

His Excellency the President of the Lebanese Republic;

His Majesty the King of Egypt;

His Majesty the King of the Yemen;

Desirous of strengthening the close relations and numerous ties which bind the Arab States;

And anxious to support and stabilize these ties upon a basis of respect for the independence and sovereignty of these states, and to direct their efforts towards the common good of all the Arab countries, the improvement of their status, the security of their future, the realization of their aspirations and hopes;

And responding to the wishes of Arab public opinion in all Arab countries; Have agreed to conclude a Pact to that end and have appointed as their plenipotentiaries the persons whose names are listed hereinafter; †

who, after having exchanged their credentials which were found to be in good and due form, have agreed upon the following:

Article 1

The League of the Arab States shall be composed of the independent Arab States which have signed this Pact.

Every independent Arab State has the right to become a member of the League. If it desires to do so, it shall submit an application which will be deposited with the Permanent Secretariat-General and submitted to the Council at the first meeting held after submission of the request.

Article 2

The League has as its purpose the strengthening of the relations between

* See note in Journal, above, pp. 797-800. This translation has been made from the official Arabic text which was handed to the representatives of each signatory and which also appeared in the Arabic press of Cairo, March 23, 1945 (Cf. Al Ahram, Al-Magattam, etc.). The translation has been compared with the incomplete French text appearing in Le Progrès Egyptien, March 23, 1945, and the English text (without annexes) which appeared as a document of the United Nations Conference on International Organization (Doc., 72), III/4/1, May 4, 1945). P.W.I.

† Various delegates, apart from their official positions, were among the leading figures in

the member states; the coordination of their policies in order to achieve cooperation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries.

It has also as its purpose the close cooperation of the member states, with due regard to the organization and circumstances of each state, in the following matters:

- A. Economic and financial affairs, including commercial relations, customs, currency, agriculture and industry.
- B. Communications, including railroads, roads, aviation, navigation, telegraphs, and posts.
 - C. Cultural affairs.
- D. Nationality, passports, visas, execution of judgments, and extradition of criminals.
 - E. Social welfare affairs.
 - F. Health problems.

Article 3

The League shall possess a Council (Majlis) composed of the representatives of the member states of the League. Each state shall have a single vote, irrespective of the number of its representatives.

The Council shall be entrusted with the functions of realizing the objectives of the League and of supervising the execution of agreements concluded by the member states on the questions enumerated in the preceding article, or on any other questions.

The Council shall also possess the function of determining the means by which the League is to cooperate with the international bodies to be created in the future in order to guarantee security and peace and regulate economic and social relations.

Article 4

For each of the questions listed in Article 2 there shall be set up a special committee in which the member states of the League shall be represented. These committees shall be charged with the task of laying down the principles and extent of cooperation in the form of draft agreements, to be presented to the Council for examination preparatory to their submission to the aforesaid states.

Representatives of the other Arab countries may participate in the work of the aforesaid committees. The Council shall determine the conditions under which these representatives shall participate as well as the basis for such representation.

Article 5

more member states of the League is prohibited. Should there arise among them a difference which does not concern a state's independence, sovereigned or territorial integrity, and should the parties to the dispute have recourse to the Council for the settlement of this difference, the decision of the Council shall then be effective and obligatory.

In such a case, the states between whom the difference has arisen shall not participate in the deliberations and decisions of the Council.

The Council may lend its good offices for the settlement of all differences which threaten to lead to war between two member states, or a member state and a third state, with a view to bringing about their reconciliation.

Decisions of arbitration and mediation shall be taken by majority vote.

Article 6

In case of aggression or threat of aggression by a state against a member state, the state which has been attacked or threatened with aggression may demand the immediate convocation of the Council.

The Council shall determine the measures necessary to repulse the aggression. Its decision shall be taken unanimously. If the aggressor is a member state, its vote shall not be counted in determining unanimity.

If, as a result of the attack, the government of the state attacked finds itself unable to communicate with the Council, the representative of the state in the Council shall have the right to request the convocation of the Council for the purpose indicated in the foregoing paragraph. In the event that this representative is unable to communicate with the Council, any member state of the League shall have the right to request the convocation of the Council.

Article 7

Unanimous decisions of the Council shall be binding upon all member states of the League; majority decisions shall be binding only upon those states which accept them.

In both cases the decisions of the Council shall be executed in each member state according to its respective fundamental laws.

Article 8

Each member state of the League shall respect the form of government established in the other member states and regard them as exclusive concerns of those states. Each shall pledge to abstain from any action calculated to change established systems of government.

Article 9

States of the League which desire to establish closer cooperation and stronger bonds than are provided by this Pact may conclude agreements to that end.

reaties and agreements already concluded or to be concluded in the